



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

वीरवार, 24 नवम्बर, 2022 / 03 मार्गशीर्ष 1944

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated, the 1st October, 2022

No. Shram (A) 6-2/2020 (Awards) L.C. Dharamshala.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is

pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court, Kangra at Dharamshala, H.P. on the website of Printing and Stationery Department *i.e.* "e-Gazette":—

Sl. No.	Case No.	Petitioner	Respondent	Date of Award / Order
1.	551/15	Joginder Singh	RE HPSEBL, Joginder Nagar	03-08-2022
2.	657/16	Kishori Lal (Through LRs. Sarla Devi & others)	S E, HPPWD, Mandi & others	04-08-2022
3.	57/18	Parveja	Employer, M/s Ginni Global	04-08-2022
4.	646/16	Rajesh Kumar	M/s GVK EMRI & Others	05-08-2022
5.	730/16	Naresh Kumar	MD, DAV College Delhi	13-08-2022
6.	76/20	Rakesh Kumar	M/S Cozy Touch Polyfoams, Una	13-08-2022
7.	117/21	Hardeep Singh	- do -	13-08-2022
8.	28/22	Soma Devi	M.D. M/S Swisskem Healthcare	13-08-2022
9.	26/22	Pooja Devi	-do-	13-08-2022
10.	29/22	Shubh Lata	-do -	13-08-2022
11.	61/22	Suresh Chand	Principal Engineering College	17-08-2022
12.	20/20	Mast Ram	D.F.O. Chamba	25-08-2022
13.	77/18	Ram Nath	D.M. H.P. State Civil Supplies	29-08-2022
14.	644/16	Manoj Kumar	M.D., M/s Amar Ujala & others	29-08-2022
15.	645/16	Suresh Kumar	-Do -	29-08-2022
16.	105/17	President/Secy. Spring Cozy Touch	G.M. M/s Cozy Touch, Una	31-08-2022

By order,

Sd/-
Secretary,
(Lab. & Emp.).

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 551/2015

Date of Institution : 04-12-2015

Date of Decision : 03-08-2022

Shri Joginder Singh s/o Shri Puyundi Ram, r/o Village Banehar, P.O. Bassi, Tehsil Joginder Nagar, District Mandi, H.P.Petitioner .

Versus

The Resident Engineer (Senior Executive Engineer), Bassi Power House Division, H.P.S.E.B. Limited, Joginder Nagar, District Mandi, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Shri Rajat Chaudhary, Ld. Adv.

For the Respondent : Shri Anand Sharma, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

"Whether the industrial dispute raised by the worker Shri Joginder Singh s/o Shri Puyundi Ram, r/o Village Banehar, P.O. Bassi, Tehsil Joginder Nagar, District Mandi, H.P. before the Resident Engineer (Senior Executive Engineer), Bassi Power House Division, H.P.S.E.B. Limited, Joginder Nagar, District Mandi, H.P. vide demand notice dated 08.02.2012 regarding his alleged illegal termination of services *w.e.f.* 26.03.1998 suffers from delay and latches? If not, Whether termination of the services of Shri Joginder Singh s/o Shri Puyundi Ram, r/o Village Banehar, P.O. Bassi, Tehsil Joginder Nagar, District Mandi, H.P. by the Resident Engineer (Senior Executive Engineer), Bassi Power House Division, H.P.S.E.B. Limited, Joginder Nagar, District Mandi, H.P. *w.e.f.* 26.03.1998 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. The case of the petitioner, in brief, as made out from the claim petition is that he was engaged as beldar on daily wage basis by the respondent *w.e.f.* 26.12.1997 and he worked continuously till 25.3.1998. His services were terminated *w.e.f.* 26.3.1998 in violation to the principle of 'last come first go' and later on fresh hands were also engaged without giving him opportunity to work. He raised the industrial dispute vide demand notice dated 29.4.2004 in which the conciliation proceedings took place and the appropriate Government rejected the demand vide order dated 25.8.2006 and the order attained finality. In 2012 when the petitioner came to know from reliable resources that some workmen terminated before and after him were re-engaged in the year 2006 to 2009. He raised an another demand vide demand notice dated 08.2.2013 and his demand was again rejected by the appropriate Government. The petitioner filed the writ petition before the Hon'ble High Court of Himachal Pradesh and it was allowed with the directions to the appropriate Government to refer the matter to the court for adjudication. In the aforesaid background, the petitioner has alleged violation of the provisions of Sections 25-G and 25-H of the Act by the respondent and prayed for his reinstatement with all consequential benefits.

3. The respondent has resisted and contested the claim and pleaded that it was not maintainable as the petitioner has neither completed minimum 240 working days in the preceding 12 calendar months nor any junior to him was retained and nor fresh hand was engaged thereafter. The petitioner is said to have left the work at his own and his services were never terminated.

4. The petitioner has filed rejoinder in which he referred to some rulings and reasserted the averments made in the petition by denying those of the reply.

5. On the pleadings of the parties, following issues have been framed for determination on 01.4.2019:—

1. Whether termination of the services of petitioner by the respondent *w.e.f.* 26-03-1998 is/was illegal and unjustified as alleged? ..OPP.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the industrial dispute raised by the petitioner suffers from delay and latches, as alleged? ..OPR.
4. Whether the claim petition is not maintainable in the present form, as alleged? ..OPR.
5. Whether the petitioner has no locus standi and cause of action to file the present case, as alleged? ..OPR.
6. Whether the petitioner estopped by his act, conduct and acquiescence to file the claim petition, as alleged? ..OPR.

Relief.

6. I have heard learned Authorized Representative/counsel for the petitioner as well as learned Counsel for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, my findings on the aforesaid issues are as under:—

- | | | |
|-------------|---|---|
| Issue No. 1 | : | Negative |
| Issue No. 2 | : | Negative |
| Issue No. 3 | : | Yes |
| Issue No. 4 | : | No |
| Issue No. 5 | : | No |
| Issue No. 6 | : | Yes |
| Relief | : | Petition is dismissed per operative portion of the Award. |

REASONS FOR FINDINGS

Issues No. 1 and 3

8. Both these issues are taken up together for the sake of convenience and to avoid repetition of evidence.

9. The petitioner has appeared as PW1 in the witness box and tendered some documents discussed hereinafter. The respondent, on the other hand, has examined Shri Arun Kumar,

Resident Engineer, HPSEBL Bassi Power House and tendered on record mandays chart of the petitioner Ext. RW1/B showing that the petitioner has worked only for 52 days *i.e.* 31 days in between 26.12.1998 to 25.01.1998 and 21 days in between 02.03.1998 to 25.03.1998. Thus the petitioner has certainly not worked for minimum 240 days in a calendar year preceding his termination, and it is thus clear on the face of it that violation of the provisions of Section 25-F is not made out from any angle.

10. The petitioner has raised demand notice on 29.4.2004 copy whereof has been tendered by him as Ext.PW1/G. This demand was considered by the Government and after conciliation it was rejected vide order dated 25.8.2006. The petitioner did not assail this decision of the Government and it has thus attained finality. As per the case of the petitioner, he thereafter kept silent for next six years and in the year 2012 he raised an another demand vide demand notice dated 08.2.2012 Ext.PW1/B and alleged that the workmen junior to him were retained in service. He has named S/Shri Raj Kumar, Khem Singh, Sohan Lal, Piar Chand, Gatu Ram etc. According to the petitioner, there was violation of Section 25-G of the Act. He has named one Sher Singh and Prakash Chand and some other persons, who are also said to have been engaged after his termination. He has also said that there has been violation of Section 25-H of the Act as well. This demand notice was also rejected by the Government *vide* its order and thereafter writ petition was filed to assail the order of the Government. The writ petition was allowed and direction was given to the Government to refer the matter to the court for adjudication. The petitioner has filed seniority list on the record and while going through the same it is clear that lots of workmen have been engaged in the years 1999 and 2001. The petitioner as per the mandays chart is said to have worked till 25.3.1998 for 21 days work. Thus in the year 1999 fresh hands were engaged as is clear from the seniority list. There is thus violation of Section 25-G as the petitioner should have been given an opportunity before engaging fresh hands.

11. The respondent has come up with the plea of abandonment of the work by the petitioner but no categorical evidence has been led on the record to show that any notice was issued and explanation of the petitioner was called for but he still did not join his duties. There is no document on record to suggest that a domestic inquiry was conducted in the matter of absence of the petitioner from his work. When no such material has been placed on the record definitely the plea of abandonment fails. The next question that deserves to be answered here is whether the claim of the petitioner suffers on account of delay, and, if this question is answered in affirmative whether the petitioner is entitled for reinstatement or for the alternative relief of compensation or for no relief at all. It is clear from the bare perusal of the pleadings that first demand was raised by the petitioner in the year 2004 and it was rejected by the Government in the year 2006. The decision of the Government was not assailed by the petitioner and it attained finality. The petitioner thereafter again slept on his rights till the year 2012 and then issued a second notice on the same set of facts and the Government rejected the demand raised by way of second notice but Hon'ble High Court directed the Government to refer the matter. Thus the petitioner firstly raised the matter after delay of two years and when his demand was rejected in the year 2006 he did not raise matter again and kept mum for six years without any explanation. He was terminated in March, 1998 and the second notice which led to the reference was issued in the year 2012. There is no plausible explanation anywhere. The petitioner has himself foreclosed his right by not assailing the order of the appropriate Government in the year 2004. The cause of action in the year 2012 was also same that has arisen in the year 2014. Once the Government had decided to reject the demand in the year 2004, the fresh demand of the same facts certainly could not be met with favours as it will amount to upset the decision of the Government which was never assailed and had attained finality. No doubt the Hon'ble High Court has directed the Government to make the reference but such directions was given on the second demand notice. The court has to examine the matter now from the time of second notice upon which the reference has been made. The second notice was issued in the year 2012 after 13 years of the cause of action and this delay is certainly fatal and case of the

petitioner is frustrated by the delay and latches so far as reinstatement is concerned. It is settled law by now that when there is a long delay in approaching the Government by way of demand notice, the relief of reinstatement can not be claimed as a matter of right and court has the discretion to grant the alternative relief of compensation by taking into account number of working days, age of the petitioner and other facts and circumstances.

12. In the case in hand, the petitioner has worked only for 52 days as is clear from the mandays chart and he (petitioner) has thereafter approached the appropriate Government second time after 13 years and this long delay is sufficient to deny him the right to claim the compensation by taking into account the fact that he has worked only for 52 working days in two years. Above all, the court has to keep in mind that the demand raised by the petitioner in the year 2004 was rejected by the Government and the order of the Government was not assailed and order had attained finality and therefore, this fact also goes against the petitioner. Thus taking into account the small number of days for which the petitioner has worked coupled with the fact of delay and inaction on his part for around 13 years, the petitioner is held not entitled even for the relief of compensation in these peculiar facts and circumstances. Issues no. 1 and 3 are answered in negative and in favour of the respondent.

Issue No. 2

13. In view of my findings on the issues no.1 and 3 above, this issue is also decided in negative.

Issues No.4 and 5

14. Claim petition is maintainable because it has filed in support of the reference made by the appropriate Government. It is different matter that the claim has been found not meritorious. The petitioner has locus standi and cause of action to file the claim as he has pleaded that his services were terminated without following the process of law and he was aggrieved by the act of the respondent. Both these issues are decided against the respondent.

Issue No. 6

15. The petitioner is estopped from claiming the relief for the simple reason that he has not challenged the decision of the Government covering the same relief. The respondent can not now by way of second notice claim the same relief and is thus estopped by his own act and conduct, hence, this issue is held against the petitioner.

RELIEF

16. In view of my above discussions, the present claim petition merits dismissal and is accordingly dismissed. Parties are left to bear their own costs.

17. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 3rd day of August, 2022.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 657/2016
 Date of Institution : 12-09-2016
 Date of Decision : 04-08-2022

Shri Kishori Lal s/o Shri Jai Singh, r/o Village Karadwhan, P.O. Chowk, Tehsil Sarkaghat, District Mandi, H.P. (through his legal heirs Smt. Sarla Devi (Wife), Master Kanishk Thakur (son), Divya Thakur (daughter) and Samiksha Thakur (daughter)). . .Petitioners .

Versus

1. The Superintending Engineer, H.P.P.W.D., 1st Circle, Mandi, District Mandi, H.P.
2. The Executive Engineer, B&R Division H.P.P.W.D. Sarkaghat, District Mandi, H.P. . .Respondents .

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner(s) : Shri Rajat Chaudhary, Ld. Adv.
 For the Respondent(s) : Shri Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

"Whether alleged termination of the services of Shri Kishori Lal s/o Shri Jai Singh, r/o Village Karadwhan, P.O. Chowk, Tehsil Sarkaghat, District Mandi, H.P. during February, 1998 by (i) The Superintending Engineer, H.P.P.W.D., 1st Circle, Mandi, District Mandi, H.P., (ii) The Executive Engineer, B&R Division, H.P.P.W.D. Sarkaghat, District Mandi, H.P. who has worked as beldar on daily wages basis only for 51 and 52 days during the years 1997 and 1998 respectively and has raised his industrial dispute *vide* demand notice dated 10-06-2015 after delay of more than 17 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period stated above and delay of more than 17 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. The claim was initially filed by petitioner Shri Kishori Lal but during the proceedings he expired and was substituted by his legal heirs *i.e.* his wife Smt. Sarla Devi and minor children. The children being under the care and custody of mother in the capacity of natural guardian and are represented through their mother, the natural guardian. The case of the petitioner has been to the effect that he worked as daily wage beldar in the years 1997-1998 on muster roll basis with the respondent but his services were illegally terminated on the pretext that there was scarcity of funds and whenever funds are available he shall be recalled by the respondents. The petitioner claimed that he approached the respondents time and again in between 1999 to 2013 but was never re-

engaged hence, in the year 2015 he raised the demand pointing out therein that the workmen junior to him were not terminated, and secondly, after his termination fresh hands were engaged by the respondents in clear violation to the provisions contained in Sections 25-G and 25-H of the Act. On the demand notice conciliation proceedings took place and the Government earlier rejected the demand but filed the reference after directed by the Hon'ble High Court in an order passed in writ petition. On such averments, the petitioner alleged violation of Sections 25-B, 25-F, 25-G and 25-H by the respondent and prayed for his reinstatement and all other consequential monetary and other benefits.

3. The respondents replied the claim and explained that the petitioner had worked only for 103 days *i.e.* 51 days in the year 1997 and 52 days in 1998 and thereafter he left the work at his own. It is further submitted that the petitioner was very casual in attending the work and later on left the work at his own. The demand was raised after a delay of more than 15 years and such delay frustrated his case. The respondents has further denied that any junior to the petitioner was retained at the time of alleged termination of the petitioner. No fresh hand is also said to have been engaged after the alleged termination of the petitioner, hence it is prayed that the petition be dismissed.

4. No rejoinder was filed by the petitioner.

5. On the pleadings of the parties, following issues have been framed on 26-06-2018 for determination:—

1. Whether termination of services of the petitioner by respondents during February, 1998 is/was illegal and unjustified as alleged? ..OPP.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
4. Whether the claim petition is bad on account of delay and latches on the part of the petitioner as alleged? ..OPR.

Relief.

6. I have heard learned Authorized Representative/Counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, my findings on the aforesaid issues are as under:—

- | | | |
|------------|---|---|
| Issue No.1 | : | decided accordingly |
| Issue No.2 | : | decided accordingly |
| Issue No.3 | : | No |
| Issue No.4 | : | No |
| Relief | : | Petition is partly allowed awarding lump sum compensation of ₹20,000/- per operative portion of the Award. |

REASONS FOR FINDINGS.

Issues No.1, 2 and 4

8. All these issues are taken up together for the sake of convenience and to avoid repetition of evidence, however separate findings shall be recorded on every issue at the end.

9. So far as the relief of reinstatement is concerned, it may be stated here that on account of death of petitioner this relief has become infructuous as a workman who has died cannot be reinstated. The only relief that survives for consideration is whether the legal heirs of the petitioner are entitled for any compensation, in case, it is established that the respondents has violated the provisions of Sections 25-F, 25-G and 25-H of the Act while terminating the services of the petitioner. The mandays chart of the petitioner has been tendered on the record as Ext.RW1/B and there is no dispute to this document. It is evident from the perusal of the same that the petitioner has worked for 51 days in the year 1997 and 52 days in year 1998. Thus total number of working days comes to 103 in five months. When such is the position there can not be violation of Section 25-F of the Act, even if, it is presumed for a while that services of the petitioner were terminated by the respondents.

10. The court has now to examine petitioner's case with regard to the violation of provisions contained in Sections 25-G and 25-H of the Act. Seniority list of Class-IV daily wage workers as on 31-3-2008 has been placed on record as Ext.RW1/C. When this document is carefully examined it is clear that several workmen were engaged after February 1998 and were also regularized. It means that after the services of the petitioner were terminated fresh hands were engaged but the petitioner was not called to report for the work. Had he been called at any point of time, any letter or notice would have formed part of the respondents' evidence on the record. It is not his case that while engaging fresh hands after the termination of the services of the petitioner he was also called and asked to report for the work but he never joined the work. Thus there is a violation of Section 25-H of the Act in this case. So far as violation of Section 25-G of the Act is concerned, it is clear that Shri Om Chand was engaged in February, 1997, Shri Hari was engaged in the year 1997 and Jai Singh and Ishwar Dass and several others were engaged before the termination of the services of the petitioner and they are shown to have worked for more than 240 days till the year 2006 and they were ultimately given the benefit under the law. It shows that the services of the petitioner were allegedly terminated and the workmen junior to him continued the work and thus there is violation of Section 25-G as well in this case.

11. The respondents have come up with the plea that the petitioner has himself abandoned the work and was irregular on his work. It is further case of the respondents that his services were never terminated. On the other hand, the petitioner has taken the stand that his services were terminated. It is settled law that plea of abandonment is a question of fact and the entire onus is upon the employer to prove such plea. No notice was issued to the petitioner after he left the work asking him to report back to the work. No domestic inquiry was conducted to come to the conclusion that the petitioner had no intentions to report to the work. No explanation was called at any point of time. In case, the petitioner was no reporting to the work the presumption of abandonment should not have been gathered unless he was given an opportunity to explain the reasons for his absence. Since there is no such material on the record in the testimony of RW1 Shri Mast Ram Rana, Executive Engineer, therefore, the plea of abandonment is not established. In his affidavit (Ext.RW1/A) he has merely denied the allegations and not said anything regarding the fact that the petitioner was called through any correspondences to report to the work. In these facts and circumstances, the plea of abandonment is not established. The wife of deceased petitioner has appeared as PW1 and she has tendered death certificate of petitioner on the record as Ext.PW1/B. She has also placed on the record copy of judgment dated 18-10-2014 passed by Hon'ble High Court of H.P. as Ext.PW1/C and legal heirs certificate Ext.PW1/D.

12. The last question survives for determination is whether the delay on the part of the petitioner has defeated his right completely or not. It is the case of the petitioner that he reported for the work almost every year and he was put off by the department every time. It is the case of the petitioner that the delay was bonafide on his part. It may be stated here that the petitioner is a simpleton rustic villager, a labourer by profession, and he can not be expected to be conversant with the legal position. An illiterate/semi illiterate labourer can go to the authorities and make requests and it is not expected from him that he would at once raise the demand and got the matter referred to the court. Although the petitioner is illiterate/semi illiterate labour person yet this aspect of the matter can not be forgotten that he has caused considerable delay of seventeen years in raising the demand. This delay, therefore, is quite long and it is to be taken into account while granting compensation to the legal heirs of the deceased petitioner.

13. Since the violation of Sections 25-G and 25-H of the Act is established in this case, therefore, had the petitioner been alive, the court would have held him entitled for some compensation. Since the petitioner has lost his life during litigation, therefore, his legal heirs, who have joined the proceeding to take the same to their logical end can not be deprived of what the petitioner was entitled to. Taking into account various facts and circumstances of the case already discussed hereinabove ends of the justice will be met and the purpose of invoking the provisions of beneficial legislation shall be achieved, in case, the legal heirs of the deceased petitioner are held entitled to receive of Rs.20,000/- as compensation from the respondents for the violation of the legal provisions caused by the department in not calling the petitioner back to report to work. Hence, all the issues are decided accordingly.

Issue No. 3

14. The petition is held maintainable for the aforesaid reasons and the petitioners' i.e. legal heirs of the deceased petitioner are held entitled for compensation as aforesaid and determined. Hence, this issue is also decided accordingly.

RELIEF

15. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-G and 25-H of the Act as well as inaction of the petitioner to raise the demand after a gap of 17 years. In this situation, reinstatement and other consequential benefits cannot be granted in his favour as the petitioner as he has expired during the proceedings, however, his legal heirs are held entitled for compensation to the tune of ₹ 20,000/- (Rupees twenty thousand only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

16. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 4th day of August, 2022.

Sd/-
 (HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 57/2018
 Date of Institution : 06-06-2018
 Date of Decision : 04-08-2022

Smt. Parveja Begum d/o Shri Lukman, r/o Village Tarwai, P.O. Khush Nagari, Tehsil Churah, District Chamba, H.P. . .*Petitioner.*

Versus

The Employer/General Manager, M/s Ginni Global Private Limited, Balsio Village, Tehsil Churah, District Chamba, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Shri Madan Rawat, Ld. Adv.
 For the Respondent : Shri N.L. Kaundal, Ld. AR

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

"Whether termination of the services of Smt. Parveja Begum d/o Shri Lukman, r/o Village Tarwai, P.O. Khush Nagari, Tehsil Churah, District Chamba, H.P. *w.e.f.* 16-07-2016 (as alleged by the workman) by the Employer/General Manager, M/s Ginni Global Private Limited Balsio Village, Tehsil Churah, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?"

2. The case of the petitioner, in brief, is to the effect that she was engaged on muster roll basis as daily wage Safai Karamchari by the respondent in March, 2009 and she worked as such till 16.07.2016 when her services were terminated without complying with the provisions contained in Section 25 of the Act despite of the fact that she had worked for minimum 240 days in each calendar year during the aforesaid period. The respondent is alleged to have violated the terms and conditions of the agreement entered with the petitioner's mother at the time of acquisition of her land for the project whereby the respondent had agreed to retain the petitioner for forty years in the project. The principle of 'last come first go' is also said to have been violated as workmen junior to the petitioner were retained while her services were dispensed with. Fresh hands were also engaged without giving preference to her and thus violation of Section 25-H of the Act was also made. In the aforesaid background, the petitioner served a demand notice and pursued the matter resulting in the present Reference from the appropriate Government. She has prayed for the relief of reinstatement, continuity in service, back wages and all other consequential benefits.

3. As per the respondent, the petitioner has not come forward with clean hands. In fact, she was in the habit of absenting herself from duty without sufficient cause and she did not improve herself despite of several written warnings and in this manner she could never complete 240 days in any of the calendar year. Later on, she abandoned her job at her own sweet will and did not resume the duties despite several letters served upon her urging her to report to her work. The respondent denied that there was violation of Sections 25-G and 25-H of the Act and prayed for dismissal of the claim.

4. The petitioner filed rejoinder and re-affirmed the averments made in the petition and denied those made in the reply.

5. On the pleadings of the parties, following issues have been framed on 25.04.2019 for determination:—

1. Whether the termination of services of the petitioner by the respondent *w.e.f.* 16-07-2016 is/was illegal and unjustified, as alleged? ..OPP.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable, as alleged? ..OPR..

Relief.

6. I have heard learned Counsel for the petitioner as well as learned Authorized Representative/Counsel for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, my findings on the aforesaid issues are as under:—

- | | | |
|------------|---|--|
| Issue No.1 | : | decided accordingly. |
| Issue No.2 | : | decided accordingly |
| Issue No.3 | : | No |
| Relief | : | Petition is allowed partly awarding lump sum compensation of ₹ 2,00,000/- per operative portion of the Award. |

REASONS FOR FINDINGS

Issues No.1 to 3

8. All these issues taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

9. In order to attract the provisions of Section 25-F of the Act it is for the petitioner to prove *prima-facie* that he/she has worked for minimum 240 days in the preceding 12 calendar months from the date of her termination. Once the petitioner establishes this fact *prima-facie*, the onus shifts upon the employer to disprove the petitioners case.

10. To prove her case, the petitioner has alleged and deposed that she had been working with the respondent from March, 2009 and her services were illegally terminated on 16-7-2016. The respondent, the custodian of the record pertaining to its employee, has tendered on record the mandays chart of the petitioner Ext. R-12. This chart has been prepared year-wise without referring

the months and working days per month. It is clear from this document that in April, 2015 the petitioner has worked for 214.5 days and in the year 2016 she had worked for 128.5 days. In order to attract the provisions of Section 25-F of the Act it is for the court to examine whether the petitioner has worked for minimum 240 days in preceding 12 calendar months from the date of his/her termination or not. The respondent has not given the break-up of the mandays chart in terms of months. The court has to count 12 calendar months from the date of termination (in reverse order) to calculate the number of working days. If the working days are 240 or more then provisions of Section 25-F are attracted. The respondent being the custodian of the record could have filed the breakup (month-wise) with the reply, but such break-up was withheld for reasons best known to the respondent. In this peculiar situation it is for this court to make out from the material available on the record as to whether the petitioner has worked for 240 days in 12 calendar months preceding her termination or not. In the year 2016, the petitioner is said to have worked for 128.5 days. The court has to examine the period *w.e.f.* 16.07.2016 to August 2015 (reverse order) to find out whether she has completed minimum 240 working days or not. Since, the respondent has not proved the month-wise detail of the petitioner, the court has to rely upon some other documents to come to a specific conclusion. The respondent has placed certain documents on the record out of which Ext. R-7, letter dated 15.5.2016, requires special mention. This information was sought by the petitioner from the respondent regarding her leaves and wages for the period of August 2015 to April 2016. As per this letter, the petitioner has remained absent for 34 days. Thus during the period of aforesaid nine months, the petitioner has remained absent for 34 days. There is no document on the record to show that the petitioner has remained either absent or on leave during the period of May 2016, June 2016 and till 15-07-2016. Thus the petitioner is proved to have worked for $30+31+15=76$ days. The number of days in between April 2016 to August 2015 (reverse orders) comes to April 30, March 31, Feb 29, January 31, December (2015) 31, November 30, September 30, August 31, $(30+31+29+31+31+30+31+31= 244)$ days. Total days comes to $244+76= 320$. If the petitioner has absented for 34 days and availed the leave of 22.5 days, even then the working days comes to $320- (34+22.5)= 263.5$. Thus despite of remaining absent or on leave, the petitioner is proved to have worked for minimum 240 days in between 15.07.2016 to August 2015 (reverse order). Infact, it was the duty of the employer to have furnished the month to month detail of the presence/working days of the petitioner, but no such details have been filed. The mandays Chart Ext. R-12 simply shows that the petitioner has worked for 214.5 days in the year 2015 and for 128.5 days in the year 2016. Since no such details have been filed, the court has to calculate the workings days on the basis of the material on the record. Ext. R-7 is the best document to calculate the number of days, and for the reasons mentioned hereinabove, the net working days comes to more than 240 days in the preceding 12 calendar months from the date of termination. Thus the provision of section 25-F is thus attracted. It was mandatory for the respondent to have complied with the provisions of section 25F of the Act before the termination of the services of the petitioner.

11. It may be stated here that the respondent has come up with the case that the petitioner has herself abandoned the work and her services were never terminated. As per the respondent, several letters were written to the petitioner to insist her to report back to the work, but she did not report and in this manner she abandoned the job with the clear cut intentions to not to work any more. The petitioner, on the other hand has denied this plea. She has come up with the case that she had always reported to her duties and was subjected to biased treatment at the work place at the hands of the superiors.

12. Since the plea of abandonment has been raised by the respondent, the initial onus is placed upon it to prove the same. The respondent has examined Shri Satish Singh, Dy. General Manager as RW6 in the witness box. He has tendered his affidavit Ext.RW6/A on the record. He has referred vaguely in para No. 5 that letters were written to the petitioner asking her to resume her duties but she did not come forward. He has not been specific regarding the letter in the

affidavit. When his statement was recorded he tendered several documents. Ext.RW6/D is letter dated 16-10-2012. It is not material as the controversy pertain to the year 2016 onward. Similarly there are letters dated 12-12-2009 Ext.RW6/G, 20-11-2013 Ext.RW6/H and dated 13-3-2015 Ext.RW6/I, they all are not very material for the same reason. The letter relevant for the present controversy is dated 25.07.2016 tendered as Ext. R-8. It was addressed to the petitioner asking her to join her duties immediately as she was absenting herself w.e.f 16.7.2016. There is another letter dated 03.8.2016 Ext. R-9/1 whereby the petitioner was again asked to join the duties failing which she was warned to face disciplinary action. One more detailed letter dated 5.9.2016 is Ext. R-10. It was mentioned in this letter that a committee was formed to look into her matter and committee consisted of Seniors Officers namely S/Shri Satish Singh, Rajinder Singh and Vikram Rathore. The last letter is dated 15.9.2016 tendered on the record as Ext. RW6/E. The petitioner has come up with the plea that no such letters were received by her and she had been attending the duties throughout. In such a situation, the respondent was duty bound to prove on the record the postal receipts etc. to prove that the letters were dispatched on the her home address. The respondent has examined Shri Om Prakash as RW4. He is Gram Dak Sewak of the concerned area. He has referred to one letter dated 01.8.2016 and another one dated 23.5.2016 which were tendered to the addressee and the same were returned and not accepted. The letters have been tendered vide Ext. R-7 and Ext. R-8. Since the petitioner has left the job as per the respondent's version on 16.7.2016, therefore, the letter dated 23.5.2016 is not very relevant. It is not clear as to why this letter was sent to her when she was working with the respondent at that time. Another letter dated 01.8.2016 has also not been tendered on the record and it is not clear as to which letter was posted as Ext. R-8 to the petitioner. The copy of this letter has not been tendered on the record. The copy of letter Ext. R-9 dated 3.8.2016 can not be Ext. R-8 as letter dispatched on 3.8.2016 could not have been tendered to the petitioner on 01.8.2016. Similarly letter dated 15.9.2016 could not be the same letter. For the sake of arguments, even if it is assumed for a while that letter dated 25.7.2016 Ext. R-8 was served upon the petitioner, this letter no.35 at the most proves that she was called to join the duties. Similarly letter no.39 Ext. R-9 dated 3.8.2016 even if admitted to have been delivered to the petitioner would prove that the petitioner was called to report for her duties but she did not join. Ext. R-10 (letter no.43) dated 5.9.2016 makes the things very confusing. It was written in the letter dated 5.9.2016 that a committee was constituted to look into the matter of her absence on 20.9.2016 and committee consisted of highly place officers S/Sh. Satish Singh, Rajinder Singh and Vikram Rathore. When the letter was written on 5.9.2016 how it could refer to a committee that was constituted on 20.9.2016. This letter does not, therefore, make any sense and even if the petitioner had received this letter she could not have made out the intentions of this letter. Ext. R-10 if read in the manner that the matter was fixed on 20.9.2016 for hearing before the committee, it further demolishes the case of the respondent as another letter was sent to her on 15.9.2016 without waiting for 20.9.2016, whereby it was again said that a committee was constituted on 20.9.2016 but she did not put forth her version before the committee. This letter dated is dated 15.9.2016 and the committee was constituted on 20.9.2016 which date had not even come on the date of the letter dated 15.09.2016. The respondent on 15.09.2016 came to the conclusion that the petitioner has not put forth her version before this committee. This letter further reads that she was given time till 30.9.2016 to place her version before the committee, otherwise, it shall be considered that she was not willing to work. The language of the letter further shows that on the basis on aforementioned facts she was being thrown out of the job. Thus her services were dispensed with vide letter dated 15.9.2016 which does not make any sense. On the one hand, it speaks of the fact that she can put forth her version before the committee within 15 days i.e. on 30.9.2016 failing which it shall be presumed that she was not willing to work, and on the other hand, this letter speaks of the fact that she was being thrown out of the job. The letter Ext. R-9 and Ext. R-10 and Ext.RW6/1 even when read in the light of each other do not make any sense and great confusion is created leaving the petitioner fully confused. These letters show the intentions of the respondent management to cause harassment to the petitioner by such letters which do not make any sense. When the letter is written on 5.9.2016, how it can speak of a committee that was constituted on 20.9.2016. 20.9.2016

comes after 5.9.2016. when letter was written on 5.9.2016 how it could carry the fact that a committee was constituted on 20.9.2016. If this letter is treated as an intimation to the petitioner to appear before this committee on 20.9.2016 then why a new letter was written on 15.9.2016 again alleging that she has not appeared before the committee and not put forth her version. 20.9.2016 was yet to come and writing letter on 15.9.2016 shows an act of haste and bias. On the one hand, the letter dated 15.9.2016 speaks that the petitioner shall be able to put forth her version before the committee till 30.9.2016, and on the other hand, this very letter dispenses with her services then and there on 15.9.2016. Above all, there is no document on the record regarding the proceedings that took place before the committee on 30.9.2016. It means that the committee did not record its proceedings on 30.9.2016 to decide the fate of the petitioner. When a committee was constituted it was a mandatory for the committee to have recorded its proceedings and pass a speaking order showing willful absence of the petitioner which could be construed as an act of abandonment of the work. When no such proceedings have been filed on the record, it cannot be said that the alleged act of abandonment was proved. Once a committee has been formed to ascertain the fact whether absence of the petitioner amounted to abandonment or not, failure of the committee to record such findings has shattered the case of the respondent.

13. On the other hand, when the evidence led by the petitioner is examined it is very much clear that she never intended to abandon the work. The petitioner has appeared as PW1 in the witness box and sworn her affidavit Ext.PW1/A wherein she has specifically stated that she was working throughout and had no reason to give up the work. She has tendered on record copy of PF statement Ext. PW1/B copy of complaint Ext.PW1/C, letter Ext.PW1/D and affidavit Ext.PW1/E when her complaint Ext.PW1/C is examined it is clear that she had moved this complaint to Dy. Commissioner, Chamba on 17.12.2016 alleging her harassing in the respondent company. Another complaint moved by the petitioner to Labour Inspector Chamba has been tendered on record as Ext.RW1/A by the respondent itself. This application is dated 28 February 2017 wherein she has specifically stated that she has been performing her duties with dedication and her salary was not being released. There is another letter dated 23.7.2018 which has been written by Sub Divisional Officer Churah to the company on the complaint of the petitioner. There is reply of one of such letter as Ext.R6/1 on the record in which the respondent has given reference of several letters. It is mentioned in this letter that on 9.9.2016 she had come in the office but she involved in a quarrel. There is a reference of the fact that the petitioner was asked to put forth her version on 20.9.2016 but nothing has been done. As aforementioned no proceedings on 30.9.2016 of the committee had been recorded. All these letter by the petitioner to higher officers and to the company suggest that she has never intended to give up the work and she was always willing to work. The replies filed by the respondent on the record show that she was not performing her duties well and absented. The situation is further clear from the proceedings that took place before the conciliation officer. The report under Section 12(4) has been proved on the record by RW1 Shri S.R. Verma as Ext.RW1/D. Even before the conciliation officer, the petitioner has submitted that she was working throughout but her services were illegally terminated. The version of the respondent before the conciliation officer was that they could not re-engage the petitioner in the job as she was in the habit of willfully levelling wrong allegations them. This stand of the respondent itself shows that there are no bonafides on the part of the respondent to call the petitioner back to join her services. The respondent during conciliation proceedings specifically refused to re-engaging the petitioner and such fact was recorded by the Labour Inspector-cum-Conciliation Officer in the proceedings dated 16.6.2017 Ext. RW1/E. The respondent has examined Sh. Satish Kumar as RW2 in the witness-box, who has tendered on the record the copies of the applications Ext. RW2/A and RW2/B moved to DC Office Chamba by the petitioner. Sh. Negi Ram (RW3) has tendered copies of the letters Ext. RW3/A to RW3/D. MHC Pawan Kumar of PS Tissa has tendered on record copy of rapat as Mark X. All these documents suggests that the petitioner has not remained idle and she was running from pillar to post to get her grievances settled. All these facts and circumstances suggest that the petitioner never intended to abandon the work and she was fighting tooth and nail to seek justice. It

is further proved from the aforesaid material that the respondent did not conduct an inquiry despite of having constituted an inquiry committee and wrote confused letters to the petitioner exhibiting the extent of bias towards her. Once the committee was constituted to make an inquiry into the matter of the petitioner, a report of the committee was required. Learned Authorized Representative for the respondent in the detailed written arguments has referred that when the petitioner was not coming to join the work despite of letters sent to her, the inquiry was not required. Such an arguments cannot sustain and once the committee was constituted, the services of the petitioner could not be dispensed with without there being recommendations or findings of the committee. The Learned Authorized Representative/Counsel has cited **2019 LLR 173** titled as **Smt. Kiran Bhandari vs. M/s Dr. O.P. Abral Clinic** and argued that inquiry was not required as petitioner was not joining the duties on demand. In the case in hand, the facts are different to the facts of the cited law. In the case before the Hon'ble High Court of Delhi the respondent was willing to take the petitioner back but the petitioner not joining, hence, such a presumption was drawn. In the case in hand, the respondent has specifically got recorded before the conciliation officer that the company was not prepared to keep the petitioner back in the work. Once such a plea has been taken during conciliation proceedings, the respondent can not take the plea of abandonment of work by the petitioner. It has been held by the Hon'ble Supreme Court in **2005 LLR 641** titled as **Viveka Nand Sethi vs. Chairman, J&K Bank Ltd. & Ors.** that when the workman remained absent continuously and failed to report the duties the principles of natural justice required to be complied with would not mean a full-fledged departmental proceedings but a limited inquiry was required to find out whether the employee concerned had sufficient explanation for not reporting for the duties. In the case in hand, no such inquiry was held despite of the fact that inquiry committee was constituted. Thus the respondent has failed to prove for the aforesaid detailed reasons that the petitioner has herself abandoned the work. It is, therefore, held that the petitioner had worked for minimum 240 days in 12 calendar months preceding to her termination and she had not abandoned the work. The next question that arises for consideration is whether there has been violation of Sections 25-G and 25-H of the Act as claimed by the petitioner in the pleadings and evidence. The respondent has denied such allegations. The petitioner while filing the claim has vaguely contended in para No.10 of the claim that the workmen junior to her have been retained and their names shall be disclosed at the time of filing of rejoinder and leading of evidence. She has further alleged in para No.11 that other workmen were engaged by the respondent and the petitioner was not given an opportunity hence there was violation of Section 25-H of the Act. When the rejoinder was filed neither the names were suggested nor any clarification was given by the petitioner. Thereafter evidence was led and her affidavit Ex.PW1/A was tendered. Paras No. 10 and 11 of the claim were reproduced in the same manner without realizing the consequences. Neither names of any person junior to her or re-engaged after her termination were pleaded nor proved. The respondent, on the other hand, has denied such allegations. The initial onus was upon the petitioner to prove as to who were the workmen junior to her. In case, she had named any of such workmen, the onus would have shifted upon the respondent to file on record a seniority list showing the actual position. When the petitioner has not named any person junior to her and not retrenched, she cannot take the shelter of the provisions contained in Section 25-G of the Act. Similarly when she has not named any person who were engaged after her termination without giving an opportunity to her, the violation of Section 25-H of the Act was also not established.

14. The last question that survives for determination is whether in these facts and circumstances the petitioner is entitled for reinstatement or to any other relief. It is no doubt and admitted that she was engaged in the year 2009 and remained as such till the year 2016. She is daily wager and not a regular employee. There is violation of neither Section 25-G nor of Section 25-H of the Act. Although it has been proved that the termination of the services of the petitioner was illegal act of the respondent yet the question to be answered whether she is entitled for reinstatement or to any other relief. The law is well settled to the effect that when there is the only

violation of Section 25-F of the Act, the appropriate relief the court can grant is that of the compensation, as in case of reinstatement, the respondent can always terminate the services of such petitioner after complying with the provisions contained in Section 25-F of the Act. It is also settled law that daily wager does not work against any post and such daily wager does not get any right to remain on the post automatically. The only exception carved out as that, in case, there is violation of Sections 25-G and 25-H of the Act then the workman has to be reinstated. Since there is no violation of Sections 25-G and 25-H in this case, therefore, the petitioner cannot claim reinstatement as a matter of right as her services can be terminated at any time being the junior most after complying with the provisions contained in Section 25-F of the Act. In such a situation the petitioner is entitled for the relief of compensation in view of the law of the land.

15. Taking into account the age of the petitioner, the number of working days and years and further the fact that she was wrongly terminated without following the process of law ends of the justice shall be served, in case, a compensation of ₹ 2,00,000/- is granted in her favour as full and final amount in lieu of reinstatement and other benefits. All the issues are, therefore, decided accordingly.

RELIEF

16. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-F of the Act alone in this case, and therefore, the relief of reinstatement and other consequential benefits cannot be granted in her favour but she is held entitled for compensation to the tune of ₹ 2,00,000/- (Rupees two lakh only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

17. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 4th day of August, 2022.

Sd/-
 (HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 646/2016

Date of Institution : 09-09-2016

Date of Decision : 05-08-2022

Shri Rajesh Kumar s/o Shri Kashmir Singh, r/o Village Ranehar, P.O. Rehlu, Tehsil Shahpur, District Kangra, H.P.

Versus

1. The Employer/Manager, M/s GVK EMRI, J.P. Motors Building, Village Anji, Barog Bye Pass Solan, District Solan, H.P. (Work Office)

2. The Mission Director, National Health Rural Mission, Government of Himachal Pradesh, Shimla.

3. The Managing Director, M/s Adecco India Private Limited, No.2, NAL, Wind Tunnel Road, Murugeshpalya, Bangalore-560017 (Corporate Office) . .Respondents .

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : None for the petitioner

For the Respondent No. 1 : Sh. Rajat Chaudhary, Ld. Adv.

For the Respondent No. 2 : Sh. Anil Sharma, Ld. Dy. D.A.

For the Respondent No. 3 : Sh. Manish Katoch, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

"Whether termination of the services of Shri Rajesh Kumar s/o Shri Kashmir Singh, r/o Village Ranehar, P.O. Rehlu, Tehsil Shahpur, District Kangra, H.P. w.e.f. 03-08-2013 by (i) the Employer/Manager, M/s GVK EMRI, J.P. Motors Building, Village Anji, Barog Bye Pass Solan, District Solan, H.P. (Work Office), (ii) The Mission Director, National Health Rural Mission, Government of Himachal Pradesh, Shimla, (iii) The Managing Director, M/s Adecco India Private Limited, No. 2, NAL Wind Tunnel Road, Murugeshpalya, Bangalore-560017 (Corporate Office), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers/Management?"

2. The petitioner has filed this claim petition against as many as three respondents on the averments that his services were engaged by respondent no.3 as a driver for one year in December, 2010 and appointment letter was given to him on 17.01.2011. He was driving 108 Ambulance No. HP-63-4247. His contract was renewed after one year for further one year upto January, 2012 and he performed his services with dedication and sense of satisfaction. His contract was not renewed after 16.1.2013 without assigning any reasons and his services were thus terminated in a wrongful manner without following the principle of 'first come last go' by retaining junior drivers to the petitioner in utter violation of Section 25-G of the Act. Fresh hands were also engaged after his termination but he was never called for re-employment and violation of Section 25-H of the Act also took place. His dues were not cleared on the date of his illegal termination and he was, therefore, entitled for the relief of reinstatement with all the benefits.

3. The respondent No. 3, who had engaged the petitioner resisted and contested the petition on the plea that there was a memorandum of understanding between replying respondent and respondents No. 1 and 2 which was still in force but the agreement between respondent No.1 and the replying respondent was terminated on 9th August, 2013. The services of the petitioner

were terminated after serving one month's prior notice dated 02.8.2013. It has been pleaded that the respondent No. 3 has no role in the matter and also had no liability.

4. The respondent no.1 has resisted and contested the claim on the plea that the petitioner was employee of respondent no. 3 and respondent no.1 was not responsible in any manner nor the respondent no.1 has terminated his services. The salary of petitioner were paid by respondent no. 3 to the petitioner and letter was also issued by respondent no. 3.

5. Respondent no. 2 has resisted and contested the petition by taking up the plea that it was giving tenders/ contracts to provide the ambulance services and one of such contract was given to respondent no.1 as it was the lowest tenderer for a period of five years. In the year 16.11.2016 there was a memorandum of understanding between respondent no.1 and respondent no. 3 which had come to an end and respondent no.1 has not caused violation of any rules hence there was no reason to hold the liability of the respondent no. 1.

6. The petitioner has filed rejoinders to the aforesaid replies and re-affirmed the averments made in the petition and denied those made in the replies.

7. On the pleadings of the parties, following issues were framed:—

1. Whether the petitioner was illegally and unjustifiably terminated by the respondents *w.e.f. 03-08-2013*, as alleged. If so, its effect? ..OPP.
2. Whether the claim petition is not maintainable, as alleged? ..OPR.
3. Whether the petitioner was engaged on contract basis for a specific period, as alleged? ..OPR.
4. Whether the petitioner has no locus standi and cause of action to file the present case, as alleged? ..OPR.
5. Whether the petitioner is estopped to file the present claim by his act and conduct, as alleged? ..OPR.

Relief.

8. I have heard learned counsel for the respondents at length and considered the material on record.

9. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

- | | |
|-------------|--|
| Issue No. 1 | : Negative |
| Issue No. 2 | : Negative |
| Issue No. 3 | : Yes |
| Issue No. 4 | : Yes |
| Issue No. 5 | : Yes |
| Relief | : Petition is dismissed per operative part of the Award. |

REASONS FOR FINDINGS

Issues No.1 to 5

10. All these issues taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

11. After the issues were framed and file was listed for evidence of the petitioner but no evidence was led by the petitioner and on 13.9.2021 the learned counsel appearing for the petitioner submitted that the petitioner did not want to pursue the matter in further. Still as a matter of caution the court directed the petitioner to appear in person before the court to make his statement but the petitioner did not appear and his counsel pleaded that no instructions has been received from the petitioner. Notice was sent on the address of the petitioner and the same was received by his father but neither the petitioner nor any person has appeared on his behalf hence the petitioner was directed to be heard ex parte being a reference it could not be dismissed in default.

12. Although there was pleading regarding wrongful termination of the petitioner but he (petitioner) has not led evidence in support of this pleading and the allegations are not established against either of the respondent. It was for the petitioner to speak about the allegations on oath and since he has not appeared therefore no evidence could be led due to his (petitioner's) absence. Thus no evidence has been led by the petitioner in support of the allegations leveled by him. When there is no evidence in support of the averments made in the petition, the petition fails and the reference has to be answered in negative. All these issues are decided against the petitioner.

RELIEF

13. In view of my above discussions, the present claim petition merits dismissal and is accordingly dismissed. Parties are left to bear their own costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 5th day of August, 2022.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

BEFORE THE NATIONAL LOK ADALAT HELD AT DHARAMSHALA

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19 of the Legal Services Authorities Act, 1987 (Central Act)]

Applicant : Sh. Rakesh Kumar & others workers of Union of M/s Cozy Touch Polyfoams, Vill. Heer Thada (Laluwal), P.O. Bidherwal, Tehsil Haroli, District Una, H.P.

Respondent(s) : The Employer, M/s Cozy Touch Polyfoams (I) Private Limited, Village Heer Thada (Laluwal) P.O. Bidherwal, Tehsil Haroli, District Una, H.P.

Number of proceedings of the Labour Court-cum-Industrial Tribunal, Dharamshala : 76/2020

Present:

Applicant : Sh. Rajat Chaudhary, Ld. Adv. Vice

Respondent No.1 : Sh. Manish Kumar [Assistant Manager (HR) with Sh. Yatish J.P. Ld. Adv.]

AWARD

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

Parties have entered in a compromise and the statement was recorded on 21.7.2022. The petitioner has submitted that he has entered in a compromise with the respondent and he has settled the matter. According to him he has no grievance for redressal hence he does not want to continue with the reference. In view of this the reference is answered in negative.

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Member

(B. S. PATHANIA)

Judicial Officer

(HANS RAJ).

Announced:

Date: 13-08-2022

BEFORE THE NATIONAL LOK ADALAT HELD AT DHARAMSHALA

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19 of the Legal Services Authorities Act, 1987 (Central Act)]

Applicant : Sh. Hardeep Singh s/o Sh. Sohan Singh, r/o Village Sauwal (Heera Nagar), P.O. Dulehar, Tehsil Haroli, District Una, H.P.

Respondent(s) : The Employer, M/s Cozy Touch Polyfoams (I) Private Limited, Village Heer Thada (Laluwal), P.O. Bidherwal, Tehsil Haroli, District Una, H.P.

Number of proceedings of the Labour Court-cum-Industrial Tribunal, Dharamshala : 117/2021

Present:

Applicant : Sh. Rajat Chaudhary, Ld. Adv. Vice

Respondent No.1 : Sh. Manish Kumar (Assistant Manager (HR) with Sh. Yatish J.P. Ld. Adv.]

AWARD

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

The petitioner has sent a correspondence through post stating therein that he has left the work two years back and he has no more interested in the matter nor he has any claim against the respondent. Notice was issued to the petitioner but he did not put his appearance. There is a affidavit of the petitioner to this effect which has been received through post he also sent the copy of his Aadhar card. It is stated that the petitioner is no more interested in the matter. He has not interested to appear before the court due to economic reason. In the nutshell he is not interested in the matter hence in view of his affidavit received through post the reference is answered in negative.

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Member

(B. S. PATHANIA)

Judicial Officer

(HANS RAJ)

Announced:

Date: 13-08-2022

BEFORE THE NATIONAL LOK ADALAT HELD AT DHARAMSHALA

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19 of the Legal Services Authorities Act, 1987 (Central Act)]

Applicant : Smt. Soma Devi w/o Late Shri Makhan Singh, r/o Village Khanpur, Tehsil & District Una, H.P.

Respondent(s) : The Managing Director, M/s Swisskem Healthcare, V.P.O. Bela Bathri, Tehsil Haroli, District Una, H.P.

Number of proceedings of the Labour Court-cum-Industrial Tribunal, Dharamshala : 28/2022

Present:

Applicant : Sh. Sandeep Kumar, Ld. Legal Aid Counsel

Respondent : Sh. Aman Kapoor, Ld. Vice Counsel

AWARD

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

In view of the statements of the parties recorded on 03.8.2022 the parties have entered into compromise and the petitioner has been taken back to the work with seniority. She has only been refused the back wages for the period of absence and the petitioner has also no grievances for the same. The statement of Shri Radhe Sham was also recorded on the aforementioned dated and he has assured that a good atmosphere shall be created in the company and present petitioner shall be shifted from where she has to make to work to place where female workers are working. The reference is thus disposed of as having been compromised and the petitioner shall be shifted from place of her present work to the place where ladies are working within fifteen days from the date of her statement. In case the reference is not complied with the petitioner shall be liberty to again approach the court.

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Member

(B. S. PATHANIA)

Judicial Officer

(HANS RAJ)

Announced:

Date: 13-08-2022

BEFORE THE NATIONAL LOK ADALAT HELD AT DHARAMSHALA

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19 of the Legal Services Authorities Act, 1987 (Central Act)]

Applicant : Smt. Pooja Devi w/o Sh. Sanjeev Kumar, r/o V.P.O. Malraon, Tehsil Kalol, District Bilaspur, H.P.

Respondent(s) : The Managing Director, M/s Swisskem Healthcare, V.P.O. Bela Bathri, Tehsil Haroli, District Una, H.P.

Number of proceedings of the Labour Court-cum-Industrial Tribunal, Dharamshala : 26/2022

Present:

Applicant : Sh. Ritu Bala, Ld. Legal Aid Counsel

Respondent : Sh. Aman Kapoor, Ld. Vice Counsel

AWARD

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

In view of the statements of the parties recorded on 03.8.2022 the parties have entered into compromise and the petitioner has been taken back to the work with seniority. She has only been refused the back wages for the period of absence and the petitioner has also no grievances for the same. The statement of Shri Radhe Sham was also recorded on the aforementioned dated and he has assured that a good atmosphere shall be created in the company. The reference is thus disposed of as having been compromised. In case the reference is not complied with the petitioner shall be liberty to again approach the court.

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Member

(B.S. PATHANIA)

Judicial Officer

(HANS RAJ)

Announced:

Date: 13-08-2022

BEFORE THE NATIONAL LOK ADALAT HELD AT DHARAMSHALA

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19 of the Legal Services Authorities Act, 1987 (Central Act)]

Applicant : Smt. Subh Lata w/o Shri Tilak Raj, r/o VPO Bathu, Tehsil Haroli, District Una, H.P.

Respondent(s) : The Managing Director, M/s Swisskem Healthcare, V.P.O. Bela Bathri, Tehsil Haroli, District Una, H.P.

Number of proceedings of the Labour Court-cum-Industrial Tribunal, Dharamshala : 29/2022

Present:

Applicant : Sh. Bhubnesh Chaudhary, Ld. Legal Aid Counsel

Respondent : Sh. Aman Kapoor, Ld. Vice Counsel

AWARD

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

In view of the statements of the parties recorded on 03.8.2022 the parties have entered into compromise and the petitioner has been taken back to the work with seniority. She has only been refused the back wages for the period of absence and the petitioner has also no grievances for the same. The statement of Shri Radhe Sham was also recorded on the aforementioned dated and he has assured that a good atmosphere shall be created in the company. The reference is thus disposed of as having been compromised. In case the reference is not complied with the petitioner shall be liberty to again approach the court.

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Member

(B.S. PATHANIA)

Judicial Officer

(HANS RAJ)

Announced:

Date: 13-08-2022

**IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 61/2022
 Date of Institution : 02-06-2022
 Date of Decision : 17-08-2022

Shri Suresh Chand s/o Shri Majnu Ram, r/o Village Ghugrar, P.O. Chandpur, Tehsil Sadar, District Bilaspur, H.P. . .Petitioner.

Versus

1. The Principal/Director, Jawahar Lal Nehru Engineering College, Sunder Nagar, District Mandi, H.P. (Principal Employer)
2. The Manager, Saraswati Dot Com Private Limited, Block No. 24, 3rd Floor, STPI, SDA Commercial Complex, Kasumpti, Shimla, H.P. . .Respondents .

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Petitioner in person
 For the Respondent No. 1 : Sh. Subhash Chand, Ld. ADA
 For the Respondent No. 2 : None

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):

"Whether the termination of services of Shri Suresh Chand s/o Shri Majnu Ram, r/o Village Ghugrar, P.O. Chandpur, Tehsil Sadar, District Bilaspur, H.P. by (1) the Principal/Director, Jawahar Lal Nehru Engineering College, Sunder Nagar, District Mandi, H.P. (Principal Employer), (2) the Manager, Saraswati Dot Com Private Limited, Block No.-24, 3rd Floor, STPI, SDA Commercial Complex, Kasumpti, Shimla, H.P. (Contractor) during September, 2019 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. Before the petitioner could file claim petition the parties entered into compromise and the petitioner has appeared and stated on oath that his dispute has been settled amicably with the respondent and his services have been re-engaged and he is now working in the same manner. The petitioner has also made the statement to the effect that since he has been re-engaged, hence, he was not interested in the present matter.

3. Since it is a reference, therefore, it is to be answered by this court and the reference cannot be withdrawn.

4. Since the petitioner has been re-engaged, therefore, the reference has rather become infructuous and the petitioner has also led no evidence on record to prove that his services were terminated without following the provisions of the Industrial Disputes Act. Therefore, the reference is answered in negative though a compromise taken place between the parties and the services of the petitioner has been re-engaged. Parties are left to bear their costs.

5. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 17th day of August, 2022.

Sd/-
 (HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
 (CAMP AT CHAMBA)**

Ref. No. : 20/2020
 Date of Institution : 02-03-2020
 Date of Decision : 25-08-2022

Shri Mast Ram s/o Shri Bindro Ram, r/o Village Saroti, P.O. Bhajotra, Tehsil Salooni, District Chamba, H.P. .Petitioner.

Versus

The Divisional Forest Officer, Churah Forest Division, Salooni, District Chamba, H.P. .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, Ld. AR and
 Smt. Kushla Devi (legal heir of the deceased petitioner)
 For the Respondent : Sh. Anil Sharma, Ld Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under Section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

"Whether the demand raised *vide* demand notice 01.04.2018 (Copy enclosed) by Shri Mast Ram s/o Shri Bindro Ram, r/o Village Saroti, P.O. Bhajotra, Tehsil Salooni, District Chamba, H.P. regarding issue of Muster Roll for full month basis instead of (15) days against Bill basis and period of fictional breaks from the initial date of engagement *i.e.* year, 2013 onwards be counted for continuous service before the Divisional Forest Officer, Churah Forest Division, Salooni, District Chamba, H.P., as alleged by the workman, is tenable, legal and justified? If yes, what relief of service benefits the aggrieved workman is entitled to as per demand notice from the above employer under the provisions of the Industrial Disputes Act, 1947?"

2. It may be stated here that the case was listed for appearance of the legal heirs of the deceased petitioner today. Therefore, one of the legal heirs namely Smt. Kushla Devi w/o of the deceased petitioner has appeared and filed application for withdrawal of the case along-with death certificate of the petitioner Shri Mast Ram wherein she submitted that she is not willing to pursue the reference further and she intend to withdraw the same. Thus no claim petition as well as evidence has been led by the legal heirs of the deceased petitioner in support of the allegations leveled by the deceased petitioner. When there are neither pleadings nor evidence in support of the case of the deceased petitioner, the petition fails and the reference has to be answered in negative.

3. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 25th day of August, 2022.

Sd/-
 (HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 77/2018
Date of Institution	: 23-07-2018
Date of Decision	: 29-08-2022

Shri Ram Nath s/o Late Shri Dharam Chand, r/o Village Shour, P.O. Purthi, Tehsil Pangi, District Chamba, H.P.Petitioner.

Versus

1. The Managing Director, H.P. State Civil Supplies Corporation Limited, Shimla-9

2. The Divisional Manager, H.P. State Civil Supplies Corporation Limited Dharamshala, District Kangra, H.P. . . Respondents .

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri O.P. Bhardwaj, Ld. Adv.

For the Respondent(s) : Sh. V.K. Gupta, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):

"Whether termination of the services of Shri Ram Nath s/o Late Shri Dharam Chand, r/o Village Shour, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. during October, 2005 by (i) the Managing Director H.P. State Civil Supplies Corporation Limited Shimla-9, H.P. and (ii) the Divisional Manager, H.P. State Civil Supplies Corporation Limited Dharamshala, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?"

2. As per the facts as stated in the claim, the petitioner belongs to remote area of District Chamba and was engaged as part-time worker on 15th June 1990 at wholesale and retail price shop Purthi, Tehsil Pangi. He was promoted as helper on daily wages on 01.03.2001 and worked in the aforesaid capacity till October, 2005 with sincerity, honesty and devotion. His services were orally terminated in October, 2005 by the respondents and feeling aggrieved, he approached the respondents time and again with the request to re-engage him, but in vain. Infact an FIR No.14/2005 dated 28.10.2005 was registered in Police Station Pangi against one Pawan Kumar in which the petitioner was also falsely implicated as a co-accused. He had to seek pre-arrest bail and joined the investigation. An application in June, 2006 was moved to the respondent no.2 praying for his re-engagement but he was put off, on one or other pretext and only verbal assurances were given to him. He approached the Himachal Pradesh Administrative Tribunal in the year 2008 by filing original application and, in the meanwhile, the Tribunal was scraped by the Government of Himachal pradesh and matter was transferred to Hon'ble High Court where it was finally disposed of on 29.6.2011 directing the respondents to consider the case of the petitioner. The respondents again did nothing and in the meanwhile the petitioner was acquitted of the criminal case by the learned Chief Judicial Magistrate Chamba vide judgment dated 20.10.2015 and this judgment attained finality as it was not appealed against. When the petitioner was not re-engaged he raised the demand and even then nothing took place and Government decided to not to refer the matter for adjudication. The petitioner approached the Hon'ble High Court by way of writ petition and only then the present reference was made after the writ was allowed. As per the petitioner, the respondents violated the principles of 'Last come First go' and retained junior workmen to him, and secondly, engaged fresh hands without giving him an opportunity. It is alleged that in this manner, the respondents not only violated the provisions of Section 25-F but also Sections 25-G and 25-H of the Act. In the aforesaid background, the petitioner has prayed for the relief of reinstatement with all consequential benefits including the regularization and back-wages, as he was not gainfully employed.

3. The respondents, while resisting and contesting the petition have admitted the factum of initial engagement and subsequent promotion as helper on daily wages as pleaded. He is alleged

to have absented himself from his duties w.e.f. 29.9.2005 at his sweet will without any notice. Shri Kapil Dev Gupta, the then Assistant Area Manager visited the wholesale and retail price shop, Purhi, Tehsil Pangi where the petitioner was performing his duties. The aforesaid shop was not opened for inspection and the keys of the same were not handed-over. The respondents have alleged that the petitioner had left the job at his own without informing the authorities, and therefore, his services stand terminated. It is said that as per the directions of Hon'ble High Court of Himachal Pradesh his petition was treated as representation and it was decided against him as he had been absented for a considerable period and he had himself given up the job. Other allegations are denied and it is submitted that the petitioner has no case for the relief as claimed, hence, the reference be answered in negative.

4. The petitioner filed rejoinder and re-affirmed the averments made in the petition and denied those made in the reply.

5. On the pleadings of the parties, following issues have been framed on 12.06.2019 for determination:—

1. Whether the termination of services of the petitioner by the respondents during October, 2005 is/was illegal and unjustified, as alleged? . .OPP.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP..
3. Whether the claim petition is not maintainable, as alleged? . .OPR..
4. Whether this Court has no jurisdiction to try the claim petition, as alleged? . .OPR.
5. Whether the petitioner has not approached this Tribunal with clean hands and has suppressed the material facts, as alleged? . .OPR.
6. Whether the petitioner has no cause of action to file the present case, as alleged? . .OPR.

Relief.

6. I have heard learned Counsel for the parties at length and considered the material on record.

7. For the reasons recorded hereinafter, my findings on the aforesaid issues are as under:—

- | | | |
|-------------|---|--|
| Issue No.1 | : | Yes |
| Issue No. 2 | : | decided accordingly |
| Issue No. 3 | : | No |
| Issue No. 4 | : | No |
| Issue No. 5 | : | No |
| Issue No. 6 | : | No |
| Relief | : | Petition is partly allowed per operative portion of the Award. |

REASONS FOR FINDINGS

Issues No.1 and 6

8. Both these issues taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

9. The factum of Initial engagement of the petitioner as part-time worker in the year 1990 and his subsequent promotion as helper on daily wages in the year 2001 is admitted in the pleadings. It is the case of the respondent itself that the petitioner worked till 29.09.2005 and absented thereafter. Thus it is an admitted fact that the petitioner has discharged his duties in continuity *w.e.f.* 1990 till September 2005 and there was no complaint whatsoever in between against him. Pangi of Himachal Pradesh is hard area and a workman has to work for minimum 160 days in preceding 12 calendar months in this area to invoke the provisions of section 25-F of the Act. The requirement of minimum 240 working days in the preceding 12 calendar months is not applicable. The petitioner has placed on the records copies of various pay-slips in his name as Ext. PW1D-1 to Ext. PW1/D 38 showing that he has worked in continuity during the aforesaid period. The respondents have otherwise no pleaded any service break in between, and therefore, these documents are not very material to establish anything. Once it is an admitted fact that the petitioner has worked without any complaint *w.e.f.* 1990 to September 2005 in continuity, it is an established fact that the petitioner has worked for minimum 160 working days in the preceding 12 calendar months before his alleged termination and the compliance of the provision as contained in section 25-F was required, in case, the services of the petitioner were to be dispensed with.

10. The factual dispute raised by the respondent is regarding the manner the services of the petitioner were discontinued. The respondents have taken up the plea of abandonment of the job by the petitioner *w.e.f.* 29.09.2005. It is settled law that, in case, the employer takes the plea of abandonment of work by the workman, the onus is upon the employer to discharge the same by leading sufficient evidence. Whenever a workman absents from the work without any intimation, the employer is duly bound to investigate into the reasons for his absence and ask him to resume his duties. In case, the employee fails to resume his duties, the employer is supposed to conduct an inquiry into the matter after calling for the employee to participate in the said inquiry and put forth his version. If the workman still does not participate in the inquiry or fails to justify his absence or exhibits his intentions to quit the job, only then his services can be terminated by the employer after recording the reasons for doing so in the inquiry report. Since the labour laws are beneficial in nature and meant to protect the interest and welfare of the workmen, no employer can presume that the workman has left the job. A complete exercise has to be undertaken in the shape of a domestic inquiry before presuming that the workman has left the job. Infact there can not be any such presumption. Such conclusion can be drawn by the employer on the basis of an express conclusions drawn after holding an inquiry in which such a workman was given an opportunity to participate.

11. The present petitioner had worked with the respondents for a long tenure in continuity without any complaint in between. He was even promoted in the year 2001 to the post of helper and worked in such a capacity till September 2005. Promotion is always performance based and undeserving employees can even be denied the benefit of the promotion. Since the petitioner was promoted in the year 2001, it is thus well understood that he was a proficient worker and fulfilled the requisite conditions for being promoted.

12. In the aforesaid background, in case the petitioner after having served for a span of 15 years had suddenly disappeared from his job, the respondents could not have presumed that the petitioner has left the job. It was the duty of the respondents to find out the reasons of absence of the petitioner and conduct an inquiry into the facts to find out whether the absence was intentional

or for the reasons beyond his control. It was for the respondent to ascertain whether any such absence amounted to gross misconduct and exhibited the intentions of the petitioner to not to work any further or he had a sufficient cause to justify his absence from duty. All this could have taken place after the petitioner was associated in such an inquiry. The respondents, as per their own pleadings did not take any such steps to associate the petitioner and presumed at the superficial level that the petitioner has abandoned the job.

13. There is one more very important fact which requires a special attention here. The petitioner was posted as helper and his duty was to extend the help to the In-charge of the retail shop. This fact is clear from the perusal of the Office Order Ext. RW1/E. Thus the In-charge clerk of the retail shop was responsible for maintaining the affairs of the shop and the petitioner was to work under him and assist him in his affairs without having any independent control. There is no material on the record to show that the petitioner was at any point of time assigned the responsibility of the retail shop. When the petitioner was merely working as an helping hand to the In-charge of the shop, how could he have caused irregularities in the distribution of the edibles. The In-charge of the retail shop was never examined in the witness-box to explain the things. An FIR was lodged against the petitioner and against one Pawan Kumar for the offences under section 409 & 120 IPC in PS Pangi in the year 2005 being the FIR No. 14/05 and the petitioner was released on pre-arrest bail by the court. The petitioner was acquitted of the charge by the court of Learned Chief Judicial Magistrate Chamba vide judgment dated 25.08.2015 and this judgment attained finality. In case, the petitioner has caused wrongful loss to the respondent to the tune of more than 10 lacs, the respondents were duty bound to conduct an inquiry in the matter and fix the liability departmentally, where after the amount could have been recovered from the petitioner. Nothing was done by the respondents probably for the reason that the petitioner was never posted as In-charge of the retail shop at any point of time and legally speaking, only the In-charge of such a shop could have been held accountable for any such loss. To cut the things short, when there were serious allegations against the petitioner, the respondents should have called the petitioner back even if he was not reporting for the duties and asked him to account for the wrongful loss caused by him to the Corporation. Had he not joined the inquiry despite of being called upon to do so, the Inquiry should have been completed ex parte and a specific finding should have been arrived at as to whether he was proved to have caused the irregularities or not. The respondents did not take any steps to call for the petitioner and presumed at the superficial level at their own that the petitioner has abandoned the work. The plea of the abandonment is not proved as much more was required to prove the same.

14. On the other hand, when the pleadings of the petitioner are examined in the light of the evidence led by him, it is proved that he has never abandoned the job, rather, he was not permitted to work by the respondents. The petitioner has specifically pleaded and proved that he was not permitted to work by the respondents on one or the other pretext despite of his requests. The petitioner has specifically pleaded in para no. 8 of the petition that he represented the respondents on 21.06.2006 for his re-engagement but nothing was done. The respondents have although denied the contents of the para as incorrect but have not specifically stated that no such representation was ever made by him. There should have been specific denial of the specific fact. The petitioner has appeared as PW1 and during the cross-examination, he again stated that he has requested the respondents time and again to reinstate him, but he was put off on one or the other pretext. It is very much clear from the records of the case that the petitioner has approached the Hon'ble Administrative Tribunal against his oral termination, and the matter was transferred to Hon'ble High court after the Tribunal ceased to exist. The CWP (T) no. 14478/2008 was decided by the Hon'ble court 29.06.2011 and the petitioner was directed to firstly approach the respondents and the respondents were directed to consider his matter accordingly within three months. The copy of the Order passed by the Hon'ble Court has been placed on the record as Ext. PW1/G. No material has been placed on the record by the respondents to show that the representation of the petitioner

was considered and a speaking order rejecting the same was passed and communicated to the petitioner. No such order has been placed on the record to show that copy of the rejection order on the representation was supplied to the petitioner so that he could further avail his remedy. The petitioner has made the reference of this fact in his demand notice Mark P-4 para 4. It has been specifically been stated by him that the respondents did not engage his services but assured him that since criminal case was pending against him, therefore, his case shall be considered after the case is decided. The respondents have also replied the demand notice and copy of the reply is Ext. PW1/C. When this document is carefully gone through, there is no reply to the averments made in the demand notice regarding the directions passed by the Hon'ble High Court. It is also not mentioned in the same that the representation of the petitioner was decided within three months as per the directions of the Hon'ble Court. It is also not mentioned in the reply that the representation of the petitioner was rejected and it was communicated to him in writing. When no such document has been filed and proved on the record, there is no reason to disbelieve the case of the petitioner when he pleads that nothing was done in his case despite of the directions of the Hon'ble High Court and he was assured orally that his case shall be considered after he secures acquittal in the criminal case. Thus the petitioner was kept in the dark throughout and matter was lingered on. The petitioner was acquitted by the court on 25.08.2015 vide judgment Ext. PW1/B and the petitioner again on 20.10.2015 represented again vide representation letter mark P-2 placed on the record. Nothing was done by the respondents and not even the representation was decided. The petitioner served the demand notice on 23.10.2015 and the reference was made to the court in the month of July 2018. Thus there is nothing on the record which would show that that the petitioner has left the job at his sweet will. The respondents are proved to have presumed at the superficial level that the petitioner was not willing to work. The respondents did not discharge their statutory duties by calling the petitioner back to the work and conduct an inquiry in the reasons of his absence. The respondents did not even take any steps to recover the value of the edibles not accounted for. Neither the responsibility of any official was fixed after conducting an inquiry into the matter nor any such report has been placed on the file of this case. The plea of the abandonment as taken by the respondent is not established and the petitioner is also proved to have approached the respondents time and again with the prayer of his reinstatement. It is also established that the petitioner ran from pillar to post for his reinstatement and even filed the cases before the Hon'ble High Court of H.P. The respondents on the other hand, are proved to have not even decided the representation of the petitioner by way of a speaking order. They are also not proved to have communicated the order to the petitioner. Since the petitioner is proved to have worked for more than 160 days in preceding 12 months of the calendar year, therefore, the plea of abandonment shall not work unless proved, and therefore, compliance of section 25-F was mandatory.

15. The petitioner has specifically pleaded in para no. 16 of the petition that fresh hands were re-engaged and at the time of his oral termination juniors were retained. The respondents in reply have simply denied the allegations as incorrect. The respondents have not placed on the record any list of the workmen on daily wages with the date of their engagement so that the court could examine the same and come to a particular conclusion. Since the respondents are custodians of the records, it is for them to establish the fact that no fresh hand was engaged by placing material on the record to this effect. Similarly the seniority list of workmen should have been placed on record in order to show that no junior workman to the petitioner was retained. It may be stated here that once the plea of the respondents regarding abandonment of the work by the petitioner fails, the presumption goes that the services of the petitioner were terminated. Once such a presumption arises, the court can look into the seniority list etc. and conclude whether any junior person was retained or not. Had the petitioner left the work at his own, as aforesaid respondents were not relieved of their duties and they were duty bound to call him back, seek his explanation, conduct an inquiry and then pass a speaking order regarding abandonment. Once the respondents failed to prove the same, therefore the court can always examine whether any person junior to petitioner was still working. A document Ext. PX (two pages) has been placed on the record. It is clear from

the same that Smt. Daya Devi was engaged on 25.7.2003. The petitioner was promoted as helper on 01.7.2001 and thus the petitioner was senior to her and she was junior to him. Thus juniors are still working whereas, the petitioner was orally terminated as no inquiry into the reasons of abandonment was ever conducted. This is in violation of the principle of 'Last come First go'. Apart from it, the petitioner has sought information under RTI and it was disclosed vide the information tendered on record as Ext.PW1/E that one helper was engaged on daily wages on 09.10.2017. It is thus very much clear that the respondents have engaged a daily wager in the year 2017 whereas, matter regarding the petitioner was pending conciliation and reference was received in July, 2018 in the court. Thus it is clear that before referring the matter of the petitioner, new workman was engaged and the petitioner was not thus given an opportunity even on fresh basis. Thus violation of Section 25-H of the Act is also established. One more document has been placed on the record as Ext. PW1/F. This is the order passed with respect to one Shri Kailash Kumar daily wager. There were serious allegation of embezzlement of Rs.25,000/- against and his services were terminated. He filed a service appeals. The inquiry report holding him guilty was neither set aside nor he was exonerated of the charges at any stage. Despite of all this, he was engaged as a fresh daily wager in the year 2017 vide order dated 09.10.2017 and his all previous seniority were not given to him. It means that the respondents have engaged a fresh hand in the year 2017 in the shape of Shri Kailash Kumar who was held guilty of misappropriation of funds in the inquiry and the findings were never set aside. When a daily wager held guilty in a inquiry of misappropriation could be reinstated though without previous benefits, the respondents should have found and hurdle in the way of reinstating the petitioner against whom no inquiry was conducted and no findings of his guilt were adjudged by any court of law, and moreover, he was representing the respondents time and again and praying for his reinstatement. There could not be two standard of the same employer for two employees, when Shri Kailash Kumar was engaged as a fresh the petitioner could have been given an opportunity to join as a fresh hand and thus violation of Section 25-H of the Act is also established.

16. The petitioner has appeared himself as PW1 in the witness box and tendered several documents as already discussed hereinabove and there is nothing in his statement to prove the abandonment. He has examined one Shri Netar Singh as PW2 to prove the fact that he was still unemployed. The respondents, on the other hand, have examined Shri Kulbhushan Sharma, Divisional Manager as RW1 and Shri Kapal Deep Gupta as RW2 their affidavits Ext.RW1/A and Ext.R2/A, some letters Ext.RW1/B, Ext.RW1/C, Ext. RW1/D and Ext.RW1/E have also then on the record which have already been discussed.

17. In nutshell, the plea of respondents regarding abandonment of the petitioner has miserably failed and there is violation of Sections 25-F, 25-G and 25-H of the Act in this case. Taking into facts and circumstances of the case the petitioner is not entitled for any back wages. He has not placed on record special material to show that he was not working at all. Issues no. 1 and 6 are decided accordingly.

Issues No. 3, 4 and 5

18. In view of my findings on issues discussed hereinabove, the petition is maintainable, petitioner has the cause of action and this court has the jurisdiction to answer the reference. It is not proved that petitioner has suppressed any material facts from this court. Issues no. 3, 4 and 5 are held against the respondents.

Issue No. 2

19. In view of the findings on issue no.1 hereinabove, the implied termination of the services of the petitioner in October, 2005 is proved illegal and unjustified act and petitioner is held

entitled for reinstatement as there is violation of Sections 25-F, 25-G and 25-H of the Act as well. The petitioner shall be entitled to all consequential benefits except back wages as he has failed to prove on record any material showing that he was unemployed throughout and could not earn his bread and had to borrow from some third person to survive. This issue is held in favour of the petitioner and against the respondents.

RELIEF

20. In view of my above discussions, the claim petition succeeds in part and is partly allowed. The respondents are directed to reinstate the services of the petitioner forthwith. The petitioner is entitled for seniority and continuity in service from the date of his illegal termination except back wages. Parties are left to bear their costs.

21. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 29th day of August, 2022.

Sd/-
 (HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 644/2016
 Date of Institution : 09-09-2016
 Date of Decision : 29-08-2022

Shri Manoj Kumar s/o Shri Pritam Chand, r/o Village Barai, P.O. Suned, Tehsil Nagrota Bagwan, District Kangra, H.P. . .Petitioner.

Versus

1. The Managing Director, Amar Ujala Publication Limited, Plot No. 22, 23, Industrial Area, Nagrota Bagwan, Tehsil Nagrota Bagwan, District Kangra, H.P. (Principal Employer)
2. The General Manager, Sham Professional Private Limited, D-130, Surya Place, Delhi Road, Meerut (contractor).

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Ravinder Agarwal, AR
 For the Respondent No.1 : Sh. N.L. Kaundal, Ld.AR
 For the Respondent No.2 : Sh. Vinay Soni, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

"Whether termination of the services of Shri Manoj Kumar s/o Shri Pritam Chand, r/o Village Barai, P.O. Suned, Tehsil Nagrota Bagwan, District Kangra, H.P. w.e.f. 31-12-2014 by (i) the Managing Director, Amar Ujala Publication Limited, Plot No. 22, 23 Industrial Area, Nagrota Bagwan, Tehsil Nagrota Bagwan, District Kangra, H.P. (Principal Employer) and (ii) the General Manager, Sham Professional Private Limited, D-130, Surya Place Delhi Road, Meerut (contractor), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?"

2. The case of the petitioner, in brief, is to the effect that the respondent no.1, is a newspaper establishment publishing daily newspaper through nineteen publication centers all over the country and its gross revenue was more than Rs.500/- crores per annum. The petitioner was interviewed by Shri Naresh Kumar, Senior Officer, Admin/HR and Shri Naveen, Electrical Department Head of the respondent no.1 and found suitable for the post of Electrician, and was therefore, appointed on 09.11.2012. He was deputed to work at printing center/factory situated at Nagrota Bagwan and later on at Dharamshala. The wages were initially credited in his bank account and after three months of joining services the wages were paid in cash. Majithia Wage Board was constituted under the 'Act, of 1955' and its recommendations were accepted vide notification dated 11.11.2011. Writ Petition to assail these recommendations was dismissed by Hon'ble the Supreme Court and all newspapers establishments were directed to pay wages to all the employees as per the Award *w.e.f.* 11.11.2011. The arrears were directed to be cleared upto March, 2014 and revised wages were to be paid *w.e.f.* April, 2014. These recommendations were not implemented by the management/respondent no.1 and when the petitioner requested the Production Manager to pay his dues in accordance with the recommendations of the Majithia Wage Board, he was called to his cabin by Production Manager on 31.12.2014 and his services were orally terminated and he was told that it was his last day and thus provisions contained in Section 25-F of the Industrial Disputes Act, 1947 and Section 16 of the Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 were violated. In the aforesaid background, the petitioner has prayed for his reinstatement and all consequential benefits viz. seniority compensation and arrears of the wages on account of provisions in terms of Majithia Wage Board which have been assessed as Rs.1702779/-.

3. The respondent no.1 the principal employer has resisted and contested the petition on the plea that the petitioner was not the workman of the respondent no.1 and no relationship of master and servant existed between them. The petitioner is said to be the employee of respondent no.2, a contractor. The respondent no.1 pleaded that it had obtained a licence under the Contract Labour (Regulation & Abolition) Act, 1970 and the agreement was entered in between respondents' no. 1 and 2 for supply of the manpower. The averments regarding Majithia Wage Board and compliance thereof are simply denied as not relevant for the present controversy. It is prayed that the petition be dismissed.

4. The respondent no. 2 has also filed the reply and contested the petition on the plea of maintainability. On merits, it is pleaded that the petitioner had himself tendered resignation and, moreover, he has not worked for more than 240 days as the services of the petitioner were availed *w.e.f.* 01.7.2014 by the respondent no.1 and he worked upto 01.02.2015 and resigned thereafter, hence, he was not entitled for any relief.

5. The petitioner has filed rejoinder and reaffirmed the averments made in the petition and denied those in the reply. It is clarified that no document showing the relationship of principal employer and contractor between the respondent has been placed on the record and the agreement dated June, 2014 seems to be fabricated document. It is submitted that the respondent has not specifically denied the facts regarding the engagement of the petitioner in the year 2012 hence petition be allowed. Similar rejoinder has been filed in response to written statement filed by respondent no. 2.

6. On the pleadings of the parties, following issues have been framed on 01.3.2018:—

1. Whether the termination of the services of the petitioner by the respondents *w.e.f.* 31.12.2014 is/was improper and unjustified as alleged? . . OPP.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . OPP.
3. Whether the petitioner has not approached the Court with clean hands as alleged? . . OPR 1&2.
4. Whether there exists no relationship of employer and employee between the petitioner and respondents no.1&2 as alleged? . . OPR.
5. Whether the claim petition is not maintainable in the present form as alleged? . . OPR.
6. Whether this court has no jurisdiction to file the present case as alleged? . . OPR2.

Relief.

7. I have heard learned Authorized Representatives for the parties at length and considered the material on record.

8. For the reasons recorded hereinafter, my findings on the aforesaid issues are as under:—

- | | | |
|------------|---|--|
| Issue No.1 | : | Decided accordingly |
| Issue No.2 | : | Decided accordingly |
| Issue No.3 | : | No |
| Issue No.4 | : | No |
| Issue No.5 | : | No |
| Issue No.6 | : | No |
| Relief | : | Petition is partly allowed awarding lump sum compensation of ₹ 2,00,000/- per operative portion of the Award. |

REASONS FOR FINDINGS

Issues No. 1 and 4

9. Issues No. 1, 2 & 4 being interlinked and interconnected are taken up together for determination for the sake of convenience and to avoid the repetition of evidence, however, separate findings shall be arrived at on all these issues in the operative part of the award.

10. The labour laws are beneficial in nature meant to protect the labour class from the exploitation at the hands of mighty and resourceful employers. Neither the strict rules of evidence are applicable while adjudicating the Reference nor the meticulous examination of the material is required before reaching a particular conclusion. It is suffice that the petitioner is able to show the existence of the *prima-facie* material in support of his case, and once he succeeds in doing so, the onus shifts upon the employer to prove that the facts are otherwise.

11. The petitioner herein claims that he is a qualified Electrician and was engaged as such by the respondent on 09.11.2012. He has tendered on the record copy of the 'Vocational Certificate' obtained by him from a competent institute as Ext. PW5/C which was issued to him on 27.08.2010. He has also tendered on the record copy of the provisional certificate as Ext. PW5/D. Both these documents show that he is qualified Electrician and thus he could be considered for the post of Electrician.

12. To further establish the fact that the petitioner was paid salary in his Saving Bank Account for few months, the petitioner has tendered on the record copy of his Saving Bank Account as Ext. PW5/B. When this document is carefully examined, it becomes clear that Rs. 4400/- was transferred through NEFT on 7.02.2013, and the Rs. 4086 was again transferred by similar mode on 07.03.2013. On 09.04.2013, a sum of Rs. 4561/- was again transferred by similar mode. These facts establish that the petitioner was working somewhere and he was paid on monthly basis by transferring the amount in his account. It is however, not proved at this stage that the aforesaid amount was deposited by the respondent no.1 in his account.

13. To prove that he was working with the respondent no. 1, the petitioner has examined two witnesses. Sh. Naveen Kumar (PW2) has specifically stated that he had worked with the respondent no. 1 *w.e.f.* 2008 to 2014 and the appointment of the petitioner had also taken place during his tenure. He was cross-examined wherein he specifically denied that he had never worked with the respondent no. 1. There is nothing in his cross-examination to suggest any motive on his part to speak against the respondent no. 1. This extract of the Saving Bank Account of this witness has been placed on the record but not tendered in evidence. The address of this witness on the said record in itself shows the name of the respondent no. 1 as his employer. Even the copy of the Identity Card of this witness showing that he was working with the respondent no. 1 has been placed on the record but the same has not been formally proved. There is no material on the record placed by the respondent to prove that this witness was deposing falsely. No specific evidence has been led by the respondent no. 1 to prove that this witness has never worked with it and he was deposing falsely due to particular reasons.

14. Sh. Tarsem Singh (PW4) has sworn his affidavit Ext. PW4/A stating therein specifically that he has also worked with the respondent no. 1 *w.e.f.* April 2012 to October 2015 and salary was received by him in his account. He has also tendered copy of his Saving Pass Book as Ext. PW4/B. He has also stated about the fact that the petitioner was working with the respondent no. 1 since November 2012 as Electrician. When the extract of his Saving Bank Account Ext. PW4/B is carefully examined, it is clear that a specified amount was deposited in his bank account every month *w.e.f* 13.06.2012. It also proves that he was also working with some company or concern and he was paid on monthly basis a specified amount in his Saving Pass Book. Even the Provident Fund was deposited in his account in the months of August 2015. The witnesses examined by the respondent have again not said anything to point out the reasons why this witness would speak against the respondent no.1.

15. The aforesaid witnesses have taken the oath to speak the truth before the court. Not only this, they have placed on record the documents showing that they were paid on monthly basis for the work in their Saving Bank Account. It is no doubt true that the extracts of the Saving Pass

Books produced by them do not specifically refer that the amount was deposited by the respondent no. 1 every month in the same yet they have spoken on oath that the amount was credited/transferred by the respondent no. 1 in their accounts as they were working with the respondent no. 1. A statement made on oath can not be brushed aside lightly and a weight has to be attached to the same. In case, these two witnesses were working with some other employer, why would they have spoken against the respondent no. 1? These two witnesses must have realized well that the respondent would call for the records from the banks and prove easily that the amount was transferred in their account by someone else. They would have thus not faced the risk of being prosecuted for perjury. Same is the case of the petitioner. He would have also not placed on the record the copy of his Saving Bank Account to show that the amount was deposited in his account every month by the respondent no. 1 as he must have also realized that he could be exposed by the respondent any time by calling for the records of the Bank to prove that the amount has been credited in his account from any other source. Since the services of the petitioner were allegedly dispensed with in the month of December 2014, there was no question for him to deposit the amount in his account every month since the year 2012 as he never knew that he shall be thrown out of the job in the year 2014. Why would the petitioner plan two years in advance and deposit the amount himself in his account and then allege that he was an employee of the respondent no. 1? Thus the petitioner has *prima-facie* brought sufficient material on the record to show that he was engaged by the respondent no. 1 in the year 2012 and sometimes the wages were paid in his account and other-times through cash. By leading this much evidence, the petitioner has discharged his initial onus and has been able to shift the onus upon the respondent no. 1 to bring the truth before the court. In case, the respondent no. 1 was stranger to the petitioner, why would he have preferred a false claim against the same. In case, the petitioner was thrown out by some other company, he would have initiated the Reference proceedings against that particular company and not against the respondent No.1. It is now for the respondent no. 1 to establish that the petitioner was conspiring against it and he had in fact no connection whatsoever with it.

16. The courts of law expect the parties to the lis to come before them with clean hands and produce the best available material for their inspection without concealing anything back. In the case in hand, the alleged employer is an organized company operating in many States of the country and the presumption goes that the records pertaining to its employees are properly maintained with complete transparency. When the petitioner has come up with the specific case that he was made to work during the period under dispute at Dharamshala and Nagrota Bagwan branch and his presence was marked in the office, it was very easy for the respondent no. 1 to disprove his claim by producing the attendance registers of the relevant times for the inspection of the court. In case, the name and presence of the petitioner was found not marked in such a register, the court would have immediately jumped to the conclusion that the case of the petitioner was utterly false and it had no legs to stand. The respondent could have also furnished the list of its employees of the Dharamshala and Nagrota Bagwan branch who were registered for deduction of EPF which is a compulsory subscription. Had the name of the petitioner been not there in such a list which is prepared monthly, the court could have come to the instant conclusion that the petitioner had never remained an employee of the respondent no.1 and for this reason his name is not entered in any of the records of the respondent no. 1. It may be stated here that the employer is custodian of the records of its employees and no such record is available with the employees as they are not supposed to maintain the same. The basic purpose of the Act is to ensure that the illiterate, semi literate and those literate workmen who are not aware of their legal rights, are not exploited by the employer by taking undue advantage of their such disability. It is for this reason that employer is supposed to bring the entire material before the court whenever there are allegation against him supported by the *prima-facie* material. The respondent no. 1 in the present case has not brought the aforesaid material before this court to prove that the petitioner has never worked with it since the year 2012. The documentary material has been purposefully withheld so that the truth does not come before this court. In case, the records of the respondent pertaining to the year 2012

were destroyed for some reasons, the officials from the EPF office could have been at least been summoned to prove the fact that no EPF in the name of the petitioner was ever deducted by the respondent no. 1. The petitioner has placed on the record extract of his Saving Pass Book wherein amount of Provident Fund has been credited twice. The respondent no. 1 could have called for the bank officials of the petitioners bank before the court with the records to prove that the monthly deposits in the Saving Account of the petitioner were done by someone else and not by the respondent no. 1, and similarly, the amount of Provident Fund was also credited by someone else. The respondent no. 1 has not even examined any other workmen of the Dharamshala and Nagrota Bagwan branches to prove the fact that the petitioner has never worked in these branches at any point of time in the year 2012 or 2013. It is thus the respondent no. 1, who has failed to discharge the onus shifted upon it after the petitioner led oral and documentary evidence in support of his case. Being the beneficial piece of legislation, the presumptions are to be drawn in favour of the petitioner and not in favour of the respondent no. 1

17. The respondent no. 1 has introduced the respondent no. 2 in the controversy and tried to make out a case that the petitioner was in-fact the employee of the respondent no. 2 and services of the petitioner were engaged through a contract on outsource basis in the year 2014. The petitioner has never named the respondent no. 2. No allegations were levelled against the respondent no. 2. This fact is clear from the application Ext. PW1/A, moved to the Labour Officer by the petitioner. It is clear from the proceedings Ext. PW1/B that it was the respondent no. 1, who disclosed the factum regarding the respondent no. 2 during the proceedings and also disclosed the address of this company. Thus the petitioner was not even aware of any such company and has not levelled any allegations against the respondent no. 2. It is at this stage that the respondent no. 2 was summoned for the first time, but it did not participate in the conciliation proceedings at all despite of being summoned. In the court, the respondent no. 2 tried to prove that the petitioner has worked only for 210 days and thereafter tendered his resignation on 01.02.2015 and accepted the EPF etc. Documentary material has also been placed on the record to prove the stand taken by it.

18. When the evidence, documentary and oral, both, is put to critical examination, several facts emerge out to prove that there is connivance between the respondent no. 1 and 2 in order to defeat and frustrate the valuable rights of the workmen and the alleged contract between the two is proved merely a camouflage to achieve the aforesaid objectives. There are various reasons to hold so discussed hereinunder.

19. Firstly, the document Ext. PW5/H dated 01 Feb., 2015 shows that the respondent no. 2 operates from New Delhi. There is nothing on the record to show that it has its local office in Himachal Pradesh especially in Kangra District. This fact is also clear from the affidavit Ext. RW2/A sworn by Sh. Abdul Razzak, HR of the respondent no. 2. The petitioner is resident of District Kangra, H.P. Alleged Pay-rolls of the petitioner and four others maintained by the respondent no. 2 w.e.f July 2014 to December 2014 proved on the record as Ext. RW2/D show that the petitioner was paid a sum of Rs. 4620/- per month. A sum of Rs. 630/- was deducted as PF every month. If a local resident of Dharamshala intends to work for a meager amount of Rs. 5000/- per month as a labourer, why shall he go to New Delhi in search of outsource agency and get himself enrolled in New Delhi? How a labourer will anticipate that by enrolling himself in New Delhi with some outsourcing agency, he shall be deployed in his home town in district Kangra? The story as developed by the respondents that the petitioner was deployed by a New Delhi based outsourcing agency with the respondent no. 1 is not convincing in the absence of any evidence to show that the petitioner was working in Delhi for some years and got thus himself enrolled with the respondent no. 2 and incidentally was deployed at his home town in district Kangra. No application ever moved by the petitioner to the respondent no. 2 to get him enrolled on the rolls of the agency, has been placed on the record. Thus there is possibility that the name of the petitioner was got enrolled by the respondent no. 1 on the rolls of the respondent no. 2 without making him aware of

the consequences and the petitioner had no direct connection with the respondent no. 2. it is for this reason that the petitioner has not said even a single word in the application moved to the Labour Officer.

20. Secondly, the respondent no. 2 is not a registered outsourcing agency under Contract Labour (Regulation & Abolition), Act 1970. The respondent no. 1 has though tendered its Registration Certificate as Ext. RW1/B, but, no such Registration Certificate has been tendered on the record by the respondent no. 2. The alleged agreement Ext. RW2/B contains stipulation no. 8.1 to the effect that respondent no. 2 shall obtain all the registrations, permissions and licenses under labour and other laws. No such Certificate has been obtained at any point of time and placed on the record. It shows that the agreement is just a paper claim and was not supposed to be acted upon seriously. The purpose of registration of the company under Contract Labour(Regulation & Abolition), Act 1970 is to bring transparency in the matter of the deployment of labour and prevent the exploitation of the labour class. Why such an outsource company was chosen by the respondent no. 1, which was not even registered for this purpose? The answer to such a question is loud and clear that the respondents had entered the contract merely as a camouflage without actually intending to hire the labour on contract, but to show some paper work to prevent the workmen from claiming their legal rights against the respondent no. 1.

21. Thirdly, the respondent no. 1 has moved an application to the Labour Officer on 01 Feb 2015 mentioning therein the list of three contractors from whom workmen were engaged. As per this document Ext. PW5/H, three workmen were engaged from the respondent no. 2. The respondent no. 2 has filed on record the documents showing that as many as five workmen were engaged by the respondent no. 1. Reference may be made to the Pay-rolls Ext. RW2/D where the number of the workers has been shown as five. RW2 Sh. Madan Razzak has also stated in his cross-examination that as many as five workmen were supplied to the respondent no. 1 including the petitioner. Why such disparities are coming in the stand of both the respondents. Thus a false declaration was given to the labour Officer to the effect that strength of the workmen engaged through the respondent no. 2 was there. The respondents have not placed any demand letter issued by the respondent no. 1 to respondent no. 2 to show the genuineness of the dealings between the two. Every thing is shrouded in doubts giving rise to the impression that the respondent no. 2 was an extended arm of the respondent no. 1 and it was used to circumvent the provisions of the labour laws without anything more. Had the dealings in between the respondent no. 1 and 2 been fair and transparent, various letters showing the demand raised by the respondent no. 1 and the list of the workers supplied by the respondent no. 2 would have been filed on the record of this case to convince the court that there was no connivance between the two. Such letters would have been dated and dispatched in the regular course of the business and this court would have easily believed the same.

22. Fourthly, the plea of the respondent no. 2 that the petitioner allegedly tendered his resignation on 01.02.2015 is not proved. The petitioner has specifically alleged that he was thrown out of job by the respondent no. 1 on 31.12.2014. The respondents, on the other hand, have come up with the case that petitioner has in-fact tendered his resignation on 01.02.2015. No such resignation letter has been placed on the record nor the petitioner has been confronted with the same. The respondent no. 2 has placed on the records the Pay-rolls of the petitioner w.e.f July 2014 to December 2014 showing that the petitioner has received the payment every month and signed the receipts. The document to this effect is Ext. RW2/D (six pages). If the petitioner had resigned on 01.02.2015, then he has worked till 31.01.2015 with the respondent no. 2. it is also the case of the respondents. If it was so, then wages for the month of January 2015 must have been paid to him in the same manner as shown in Ext. RW2/D. Why the respondents have withheld the receipts of the petitioner for the month of January 2015 from this court when rest of all the receipts have been filed on the record. An inference can be drawn by the court to the effect that the petitioner has not

worked in the month of January 2015 as he was thrown out of job on 31.12.2014 itself. This conclusion is strengthened by the contents of the application moved to get the PF of the petitioner. It has been marked as Mark R-1 and is not in dispute as it has been filed on the record by the respondents. It is very clear from this document that the date of leaving services was mentioned earlier as 31.12.2014 and later on it was converted as 01.02.2015 by way of overwriting. Had the petitioner worked in the month of January 2015, the payment receipts signed by him would have been placed on the record. Some cuttings/over-writings have been made on the form filled up under Employees Pensions Scheme. The signatures of the petitioner have been obtained on the blank forms. It is thus very much clear that the petitioner has infact worked till 31.12.2014 yet a false date of resignation was invented as 01.02.2015. The PF for the month of January 2015 was deposited without paying anything to the petitioner. All these facts suggests that the contract is merely a camouflage and nothing else and the petitioner was employee of the respondent no. 1 as he has worked with the respondent no. 1, but the paper work was done in such a manner that it could be proved that he was the workman of the respondent no. 2 and was engaged through outsource .

23. Lastly, the petitioner has tendered on the record the copy of his Saving Pass Book account showing all the transactions. It is clear from the page no. 3 of the Pass Book Ext. PW5/B that on 21.12.2015 Provident Fund amount of Rs. 13,129/-, and 4820/- was credited in his account. Similarly, on 22.01.2016 a sum of Rs. 6,259/- and 5355/- was again credited to his account. Who deposited a sum of Rs.13,129/- and Rs.4820/- in his saving bank account describing the same as Provident fund? It is thus natural that the respondent no. 2 has not deposited a sum of Rs.13,895/- and Rs.5355/- as provident fund as provident fund of Rs. 6259/- and 5, 355 was credited by the respondent no. 2 in his account on 22.01.2016. A person can not work in two establishment at one point of time and two establishments can not deposit PF in his account for the same time? Then who deposited the amount Rs.13,129/- and Rs.4820/- in the account of the petitioner on 21.12.2015? Since the petitioner has specifically come up with the case that he was working with the respondent no. 1 since the year 2012, it can safely be presumed that this amount was deposited by the respondent no. 1 in the PF account of the petitioner. The respondent no. 1 was at liberty to examine the officials from the bank to prove that this amount was deposited by someone else. When the petitioner has filed his Saving Bank Account details on the record and stated on oath he was an employee of the respondent no. 1, the onus had shifted upon the respondent no. 1 to expose the petitioner by leading evidence, in case, the petitioner was not working with it. The manner in which two different Provident Fund amounts were deposited in the account of the petitioner within a time gap of one month shows the connivance in between the respondents. It proves that the services of the petitioner were converted on the papers from the rolls of the respondent no. 1 into the rolls of the respondent no. 2 without letting him know of the fact that his services were terminated from the rolls of the respondent no. 1. The payment of the Provident Fund amount was intentionally delayed so that the petitioner does not come to know that his services have been terminated by the respondent no. 1 and his Provident Fund has been paid to him. Both the Provident Funds were paid to him after the petitioner was terminated from the rolls of the respondent no. 2. Otherwise, there could be no such coincidence that the petitioner will get two different amounts of the provident fund within one month when he was working only with one respondent. This evidence also lead to the only inference to the effect that the petitioner was employ of the respondent no. 1 and he was terminated on the papers and enrolled with the respondent no.2 and then shown to have been deployed with the respondent no. 1 as a contract labour without letting the petitioner to know all this as he worked throughout with the petitioner no 1 in the same manner.

24. For the sake of repetition, when the petitioner has examined Shri Naveen Kumar (PW2) and Shri Tarsem (PW4) to prove that he was working with the respondent no.1 since the year 2012, it was for the respondent no.1 to lead evidence to meet this case by producing the records of the company pertaining to the year 2012 and 2013. The respondent no.1 being an

organized company should not have hesitated in placing on record the attendance register of the Nagrota Bagwan and Dharamshala branches pertaining to the years 2012 and 2013 so that it could be shown that neither the name of the petitioner was mentioned anywhere in the attendance register nor any presence was marked by him at any point of time. Any other workman of the respondent no.1 could have come forward and deposed that he had neither seen the petitioner in Dharamshala branch nor in Nagrota Bagwan branch at any point of time. The petitioner has not only produced two witnesses in support to his case but has also placed on record the extracts of Saving Pass Book showing that a fixed amount was deposited regularly in his account for some of the months by the respondent no.1 as wages. The petitioner has stated on oath that for some of the months he was paid in cash. Nothing more could he have brought on the record. The petitioner has done his best to produce the best available material in his possession and power. Nothing more is expected from him. In civil cases 'proof beyond reasonable doubt' is not the standard. Such case are to be established on the scale of 'preponderance of probabilities'. The petitioner has succeeded to meet the standard and the respondent no.1 has not been able to prove that the petitioner was a stranger to it. In such a situation entering into an contract with the respondent no.2 and doing some paper work with it without terminating the services of the petitioner in public view, the connivance between the respondent no.1 and respondent no.2 is established and contract is proved to be a camouflage merely to show that petitioner was an employee of the contractor so that he could not claim any rights available to him under the law. The connivance between the respondent no.1 and respondent no.2 is proved writ large from the extract of the Saving Bank Account of the petitioner wherein after his alleged resignation the amount of Provident Fund by two different sources has been credited. In case, the petitioner was a workman of respondent no.2 alone and, in case, he had been working with respondent no.2 from July 2014 there would have been the Provident Fund amount only for seven months which could not have been more than ten thousand approximately. When a sum of rupees around nineteen thousand is credited in his account as a provident Fund apart from the sum of Rs. Around ten thousands, the onus certainly had shifted upon the respondent no.1 to prove that this amount was not credited by it and it was an act of someone else.

25. The learned Authorized Representative for the respondents has argued that no identity card ever issued in favour of the petitioner has been proved by him on the record, and therefore, it can not be said that the petitioner was employee of the respondent no.1. When the petitioner has alleged the specific connivance between respondent no.1 and respondent no.2, therefore, it is but natural that no identity cards were issued to him and other so that the petitioner could not claim any right subsequently. Had the respondent no.1 been issuing identity card to its employees even in the years 2012-2013 evidence could have been led by the respondent no. 1 before court. Had any such evidence been led by the respondent no.1, the court could have presumed that the petitioner had not worked with the respondent no.1, and for this reason he had failed to prove his identity card on the record when identity cards were issued to all the workmen by the company in the year 2012 and 2013. So far as cross-examination conducted upon the witnesses of the respondents is concerned, it is to be remembered that cross-examination was not conducted by professional advocate but by the Authorized Representative, who are not professionally trained in the art of cross-examination and they do not possess expertise of the advocates, hence the cross-examination is not to be treated very seriously. There is nothing in the cross-examination conducted upon the witnesses to show that the petitioner has himself damaged his own case. Preference has to be given to the documentary material on the record. The petitioner has examined Shri Rishab Chaudhary as PW1 who has proved for formal proceedings like letter Ext.PW1/A, Ext. PW1/B, proceedings Ext.PW1/C to Ext. PW1/E which are not very material to clinch the issue. Similarly one Shri Amit Chaudhary has tendered on record copy of conciliation meeting as Ext.PW3/A this is also not very material as there is other material already discussed on the record which is sufficient to clinch the issue.

26. In view of the aforesaid discussion it is held that the petitioner was working with the respondent no.1 since the year 2012 and the respondent no.1 in connivance with respondent no. 2

did the paper work showing that the petitioner was engaged through the contractor in July, 2014 and he resigned in February, 2015 and worked for only 210 days. It is rather proved on the record from the material already discussed that the petitioner had been working with respondent no.1 since the year 2012 and only paper work was done without his knowledge to show that he had been working with respondent no.1 only for seven months and that too through the contractor, the respondent no. 2. It is also proved that when the services of the petitioner were shown as terminated on account of his alleged resignation, only thereafter Provident Fund by two separate sources was deposited in his account which shows that respondent no.1 intentionally delayed the payment of Provident Fund so that the petitioner does not realize that he has been terminated from the respondent no.1 and was shown to have been working through respondent no.2. The petitioner is labourer by professional and he was earning a sum of rupees around five thousand per month. He can not be expected to remain vigilant at the time of signing document and a labourer cannot be expected to be well conversant with his legal rights. A labourer believes in doing the work and he is more concerned about his work rather than the manner in which documents are being prepared by the employer. Since the petitioner is proved to have been worked with the respondent no.1 w.e.f. 09.11.2012, therefore, it is proved that he has worked for 240 days in the preceding 12 calendar months as his induction through the respondent no.2 is proved to have been done behind his back and the contract between the respondent no.1 and respondent no.2 has been held as a camouflage and sham document merely to frustrate the rights of the petitioner and likewise labourers. Therefore, the respondent no.1 has caused violation of Section 25-F of the Act in this case.

27. It may be stated here that the petitioner has neither alleged the violation of Sections 25-G and nor the violation of Section 25-H of the Act. There are neither pleadings nor evidence on the record to prove that the services of the junior persons were retained, whereas, the services of the petitioner were dispensed with. There is also no evidence on the record to show that fresh hands were also engaged by the respondent no.1 after the services of the petitioner were terminated. Thus the only violation proved on the record is that of Section 25-F of the Act as the services of the petitioner were terminated without compliance of the aforesaid section.

28. It is also settled law that when there is violation of Section 25-F of the Act alone, the appropriate remedy is that of grant of compensation as a daily wage worker works against no post and can not claim any rights against any permanent post. It is well settled law that, in case, such a workman is reinstated by the orders of the court, the employer is always at liberty to comply with the provisions contained in Section 25-F of the Act and terminate the services of the workman soon thereafter. In such a situation, the order of the reinstatement is frustrated by the operation of the law. For these reasons, it is settled law that when there is no violation of Sections 25-G and 25-H, a workman who has been terminated in violation of the provisions of Section 25-F of the Act needs to be compensated rather than reinstated.

29. For the aforesaid discussion it is proved that there exists relationship of employer and employee between petitioner and respondent no.1. The respondent no. 2 for the reasons discussed hereinabove is only proved to be a company associated only for the paper work and thus the main relationship is between the petitioner and the respondent no.1 and respondent no. 2 is proved only a facilitating agency to circumvent the beneficial provisions of the labour law. It is also proved that the services of the petitioner were terminated on 31.12.2014 and he did not resign on 01.02.2015. It is not proved that the petitioner has tendered his resignation as no such document has been placed on the record and no pay rolls for the month of January, 2015 have also been placed on the record.

30. Taking into account various facts and circumstances of the case already discussed hereinabove ends of the justice will be met and the purpose of invoking the provisions of beneficial legislation shall be achieved, in case, the petitioner is held entitled to receive of Rs. 2,00,000/- as

compensation from the respondent no.1 for the violation of the legal provisions caused by the respondent. Hence, all the issues are decided accordingly.

Issues No. 3, 5 and 6

31. The petitioner is proved to have approached with clean hands as he has placed everything in his possession and powers before the court. Rather, the respondents are proved to have not come to the court with clean hands as many material documents were not placed before the court on their behalf. Claim petition is held to be maintainable and this court has the jurisdiction to deal with the same. Issues no.3, 5 and 6 are held answered against the respondents.

RELIEF

32. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-F of the Act, in this situation, reinstatement and other consequential benefits cannot be granted in his favour therefore, petitioner is held entitled for compensation to the tune of ₹ 2,00,000/- (Rupees two lakhs only), which would be paid within four months by the respondent no.1 and from the date of receipt of Award failing which the respondent No.1 shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

33. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 29th day of August, 2022.

Sd/-
 (HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SH HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	:	645/2016
Date of Institution	:	09-09-2016
Date of Decision	:	29-08-2022

Shri Suresh Kumar s/o Shri Amar Nath, r/o V.P.O. Jalot, Tehsil and District Kangra, H.P.

Versus

1. The Managing Director, Amar Ujala Publication Limited, Plot No. 22,23, Industrial Area, Nagrota Bagwan, Tehsil Nagrota Bagwan, District Kangra, H.P. (Principal Employer)
2. The General Manager, Sham Professional Private Limited, D-130, Surya Place, Delhi Road, Meerut (contractor).

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Ravinder Aggarwal, AR
 For the Respondent No.1 : Sh. N. L. Kaundal, Ld. AR
 For the Respondent No.2 : Sh. Vinay Soni, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):

"Whether termination of the services of Shri Suresh Kumar s/o Shri Amar Nath, r/o V.P.O. Jalot, Tehsil & District Kangra, H.P. *w.e.f.* 31-12-2014 by (i) the Managing Director, Amar Ujala Publication Limited, Plot No. 22, 23 Industrial Area, Nagrota Bagwan, Tehsil Nagrota Bagwan, District Kangra, H.P. (Principal Employer) and (ii) the General Manager, Sham Professional Private Limited, D-130, Surya Place Delhi Road, Meerut (contractor), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?"

2. The case of the petitioner, in brief, is to the effect that the respondent no.1, is a newspaper establishment publishing daily newspaper through nineteen publication centers all over the country and its gross revenue was more than Rs.5 00/- crores per annum. The petitioner was interviewed by Shri Naresh Kumar, Senior Officer, Admin/HR and Shri Naveen, Electrical Department Head of the respondent no.1 and found suitable for the post of Electrician, and was therefore, appointed on 09.11.2012. He was deputed to work at printing center/factory situated at Nagrota Bagwan and later on at Dharamshala. **The wages were initially credited in his bank account and after three months of joining services the wages were paid in cash.** Majithia Wage Board was constituted under the 'Act, 1955' and its recommendations were accepted vide notification dated 11.11.2011. Writ Petition to assail these recommendations was dismissed by Hon'ble the Supreme Court and all newspapers establishments were directed to pay wages to all the employees as per the Award *w.e.f.* 11.11.2011. The arrears were directed to be cleared upto March, 2014 and revised wages were to be paid *w.e.f.* April, 2014. These recommendations were not implemented by the management/respondent no.1 and when the petitioner requested the Production Manager to pay his dues in accordance with the recommendations of the Majithia Wage Board, he was called to his cabin by Production Manager on 31.12.2014 and his services were orally terminated and he was told that it was his last day and thus provisions contained in Section 25-F of the Industrial Disputes Act, 1947 and Section 16 of the Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 were violated. In the aforesaid background, the petitioner has prayed for his reinstatement and all consequential benefits viz. seniority compensation and arrears of the wages on account of provisions in terms of Majithia Wage Board which have been assessed as Rs.1702779/-.

3. The respondent no. 1 the principal employer has resisted and contested the petition on the plea that the petitioner was not the workman of the respondent no.1 and no relationship of master and servant existed between them. The petitioner is said to be the employee of respondent no. 2, a contractor. The respondent no.1 pleaded that it had obtained a licence under the Contract Labour (Regulation & Abolition) Act, 1970 and the agreement was entered in between respondents no.1 and 2 for supply of the manpower. The averments regarding Majithia Wage Board and

compliance thereof are simply denied as not relevant for the present controversy. It is prayed that the petition be dismissed.

4. The respondent no. 2 has also filed the reply and contested the petition on the plea of maintainability. On merits, it is pleaded that the petitioner had himself tendered resignation and, moreover, he has not worked for more than 240 days as the services of the petitioner were availed *w.e.f.* 01.7.2014 by the respondent no.1 and he worked upto 01.02.2015 and resigned thereafter, hence, he was not entitled for any relief.

5. The petitioner has filed rejoinder and reaffirmed the averments made in the petition and denied those in the reply. It is clarified that no document showing the relationship of principal employer and contractor between the respondent has been placed on the record and the agreement dated June, 2014 seems to be fabricated document. It is submitted that the respondent has not specifically denied the facts regarding the engagement of the petitioner in the year 2012 hence petition be allowed. Similar rejoinder has been filed in response to written statement filed by respondent no.2.

6. On the pleadings of the parties, following issues have been framed on 01.3.2018:—

1. Whether the termination of the services of the petitioner by the respondents *w.e.f.* 31.12.2014 is/was improper and unjustified as alleged? . .OPP.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the petitioner has not approached the Court with clean hands as alleged? . .OPR 1&2.
4. Whether there exists no relationship of employer and employee between the petitioner and respondents no.1&2 as alleged? . .OPR.
5. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
6. Whether this court has no jurisdiction to file the present case as alleged? . .OPR2.

Relief.

7. I have heard learned Authorized Representatives for the parties at length and considered the material on record.

8. For the reasons recorded hereinafter, my findings on the aforesaid issues are as under:—

- | | | |
|-------------|---|---|
| Issue No. 1 | : | Decided accordingly |
| Issue No. 2 | : | Decided accordingly |
| Issue No. 3 | : | No |
| Issue No. 4 | : | No |
| Issue No. 5 | : | No |
| Issue No. 6 | : | No |
| Relief | : | Petition is partly allowed awarding lump sum compensation of ₹2,00,000/- per operative portion of the Award. |

REASONS FOR FINDINGS

Issues No. 1 and 4

9. Issues No. 1, 2 & 4 being interlinked and interconnected are taken up together for determination for the sake of convenience and to avoid the repetition of evidence, however, separate findings shall be arrived at on all these issues in the operative part of the award.

10. The labour laws are beneficial in nature meant to protect the labour class from the exploitation at the hands of mighty and resourceful employers. Neither the strict rules of evidence are applicable while adjudicating the Reference nor the meticulous examination of the material is required before reaching a particular conclusion. It is suffice that the petitioner is able to show the existence of the *prima-facie* material in support of his case, and once he succeeds in doing so, the onus shifts upon the employer to prove that the facts are otherwise.

11. The petitioner herein claims that he is a qualified Electrician and was engaged as such by the respondent on 09.11.2012. He has tendered on the record copy of the 'Vocational Certificate' obtained by him from a competent institute as Ext. PW5/C which was issued to him on 19.11.2012. He has also tendered on the record copy of the Marks List issued to him on 04.07.2012 as Ext. PW5/D. Both these documents show that he is qualified Electrician and thus he could be considered for the post of Electrician.

12. To further establish the fact that the petitioner was paid salary in his Saving Bank Account for few months, the petitioner has tendered on the record copy of his Saving Bank Account as Ext. PW5/B. When this document is carefully examined, it becomes clear that Rs. 4400/- was transferred through NEFT on 08.02.2013, and the same amount was again transferred by similar mode on 07.03.2013. On 10.04.2013, a sum of Rs. 4561/- was again transferred by similar mode on 10.04.2013. These facts establish that the petitioner was working somewhere and he was paid on monthly basis by transferring the amount in his account. It is however, not proved at this stage that the aforesaid amount was deposited by the respondent no.1 in his account.

13. To prove that he was working with the respondent no. 1, the petitioner has examined two witnesses. Sh. Naveen Kumar (PW2) has specifically stated that he had worked with the respondent no. 1 w.e.f 2008 to 2014 and the appointment of the petitioner had also taken place during his tenure. He was cross-examined wherein he specifically denied that he had never worked with the respondent no. 1. There is nothing in his cross-examination to suggest any motive on his part to speak against the respondent no. 1. This extract of the Saving Bank Account of this witness has been placed on the record but not tendered in evidence. The address of this witness on the said record in itself shows the name of the respondent no. 1 as his employer. Even the copy of the Identity Card of this witness showing that he was working with the respondent no. 1 has been placed on the record but the same has not been formally proved. There is no material on the record placed by the respondent to prove that this witness was deposing falsely. No specific evidence has been led by the respondent no. 1 to prove that this witness has never worked with it and he was deposing falsely due to particular reasons.

14. Sh. Tarsem Singh (PW4) has sworn his affidavit Ext. PW4/A stating therein specifically that he has also worked with the respondent no. 1 w.e.f April 2012 to October 2015 and salary was received by him in his account. He has also tendered copy of his Saving Pass Book as Ext. PW4/B. He has also stated about the fact that the petitioner was working with the respondent no. 1 since November 2012 as Electrician. When the extract of his Saving Bank Account Ext. PW4/B is carefully examined, it is clear that a specified amount was deposited in his bank account every month *w.e.f.* 13.06.2012. It also proves that he was working with some company or concern

and he was paid on monthly basis a specified amount in his Saving Pass Book. Even the Provident Fund was deposited in his account in the months of August 2015. The witness examined by the respondent has again not said anything to point out the reasons why this witness would speak against the respondent no.1.

15. The aforesaid witnesses have taken the oath to speak the truth before the court. Not only this, they have placed on record the documents showing that they were paid on monthly basis for the work in their Saving Bank Account. It is no doubt true that the extracts of the Saving Pass Books produced by them do not specifically refer that the amount was deposited by the respondent no. 1 every month in the same yet they have spoken on oath that the amount was credited/transferred by the respondent no. 1 in their accounts as they were working with the respondent no. 1. A statement made on oath can not be brushed aside lightly and a weight has to be attached to the same. In case, these two witnesses were working with some other employer, why would they have spoken against the respondent no. 1? These two witnesses must have realized well that the respondent would call for the records from the banks and prove easily that the amount was transferred in their account by someone else. They would have thus not faced the risk of being prosecuted for perjury. Same is the case of the petitioner. He would have also not placed on the record the copy of his Saving Bank Account to show that the amount was deposited in his account every month by the respondent no. 1 as he must have also realized that he could be exposed by the respondent any time by calling for the records of the Bank to prove that the amount has been credited in his account from any other source. Since the services of the petitioner were allegedly dispensed with in the month of December 2014, there was no question for him to deposit the amount in his account every month since the year 2012 as he never knew that he shall be thrown out of the job in the year 2014. Why would the petitioner plan two years in advance and deposit the amount himself in his account and then allege that he was an employee of the respondent no. 1? Thus the petitioner has *prima-facie* brought sufficient material on the record to show that he was engaged by the respondent no. 1 in the year 2012 and sometimes the wages were paid in his account and other-times through cash. By leading this much evidence, the petitioner has discharged his initial onus and has been able to shift the onus upon the respondent no. 1 to bring the truth before the court. In case, the respondent no. 1 was stranger to the petitioner, why would he have preferred a false claim against the same. In case, the petitioner was thrown out by some other company, he would have initiated the Reference proceedings against that particular company and not against the respondent No.1. It is now for the respondent no. 1 to establish that the petitioner was conspiring against it and he had in fact no connection whatsoever with it.

16. The courts of law expect the parties to the lis to come before them with clean hands and produce the best available material for their inspection without concealing anything back. In the case in hand, the alleged employer is an organized company operating in many States of the country and the presumption goes that the records pertaining to its employees are properly maintained with complete transparency. When the petitioner has come up with the specific case that he was made to work during the period under dispute at Dharamshala and Nagrota Bagwan branch and his presence was marked in the office, it was very easy for the respondent no. 1 to disprove his claim by producing the attendance registers of the relevant times for the inspection of the court. In case, the name and presence of the petitioner was found not marked in such a register, the court would have immediately jumped to the conclusion that the case of the petitioner was utterly false and it had no legs to stand. The respondent could have also furnished the list of its employees of the Dharamshala and Nagrota Bagwan branch who were registered for deduction of EPF which is a compulsory subscription. Had the name of the petitioner been not there in such a list which is prepared monthly, the court could have come to the instant conclusion that the petitioner had never remained an employee of the respondent no.1 and for this reason his name is not entered in any of the records of the respondent no. 1. It may be stated here that the employer is custodian of the records of its employees and no such record is available with the employees as

they are not supposed to maintain the same. The basic purpose of the Act is to ensure that the illiterate, semi literate and those literate workmen who are not aware of their legal rights, are not exploited by the employer by taking undue advantage of their such disability. It is for this reason that employer is supposed to bring the entire material before the court whenever there are allegation against him supported by the *prima-facie* material. The respondent no. 1 in the present case has not brought the aforesaid material before this court to prove that the petitioner has never worked with it since the year 2012. The documentary material has been purposefully withheld so that the truth does not come before this court. In case, the records of the respondent pertaining to the year 2012 were destroyed for some reasons, the officials from the EPF office could have been at least been summoned to prove the fact that no EPF in the name of the petitioner was ever deducted by the respondent no. 1. The petitioner has placed on the record extract of his Saving Pass Book wherein amount of Provident Fund has been credited twice. The respondent no. 1 could have called for the bank officials of the petitioner's bank before the court with the records to prove that the monthly deposits in the Saving Account of the petitioner were done by someone else and not by the respondent no. 1, and similarly, the amount of Provident Fund was also credited by someone else. The respondent no. 1 has not even examined any other workmen of the Dharamshala and Nagrota Bagwan branches to prove the fact that the petitioner has never worked in these branches at any point of time in the year 2012 or 2013. It is thus the respondent no. 1, who has failed to discharge the onus shifted upon it after the petitioner led oral and documentary evidence in support of his case. Being the beneficial piece of legislation, the presumptions are to be drawn in favour of the petitioner and not in favour of the respondent no. 1

17. The respondent no. 1 has introduced the respondent no. 2 in the controversy and tried to make out a case that the petitioner was in-fact the employee of the respondent no. 2 and services of the petitioner were engaged through a contract on outsource basis in the year 2014. The petitioner has never named the respondent no. 2. No allegations were levelled against the respondent no. 2. This fact is clear from the application Ext. PW1/A, moved to the Labour Officer by the petitioner. It is clear from the proceedings Ext. PW1/B that it was the respondent no. 1, who disclosed the factum regarding the respondent no. 2 during the proceedings and also disclosed the address of this company. Thus the petitioner was not even aware of any such company and has not levelled any allegations against the respondent no. 2. It is at this stage that the respondent no. 2 was summoned for the first time, but it did not participate in the conciliation proceedings at all despite of being summoned. In the court, the respondent no. 2 tried to prove that the petitioner has worked only for 210 days and thereafter tendered his resignation on 01.02.2015 and accepted the EPF etc. Documentary material has also been placed on the record to prove the stand taken by it.

18. When the evidence, documentary and oral, both, is put to critical examination, several facts emerge out to prove that there is connivance between the respondent no. 1 and 2 in order to defeat and frustrate the valuable rights of the workmen and the alleged contract between the two is proved merely a camouflage to achieve the aforesaid objectives. There are various reasons to hold so discussed herein-under.

19. Firstly, the document Ext. PW5/H dated 01 Feb. 2015 shows that the respondent no. 2 operates from New Delhi. There is nothing on the record to show that it has its local office in Himachal Pradesh especially in Kangra District. This fact is also clear from the affidavit Ext. RW2/A sworn by Sh. Abdul Razzak, HR of the respondent no. 2. The petitioner is resident of District Kangra, H.P. Alleged Pay-rolls of the petitioner and four others maintained by the respondent no. 2 w.e.f July 2014 to December 2014 proved on the record as Ext. RW2/D show that the petitioner was paid a sum of Rs. 4620/- per month. A sum of Rs. 630/- was deducted as PF every month. If a local resident of Dharamshala intends to work for a meager amount of Rs. 5000/- per month as a labourer, why shall he go to New Delhi in search of outsource agency and get himself enrolled in New Delhi? How a labourer will anticipate that by enrolling himself in New

Delhi with some outsourcing agency, he shall be deployed in his home town in district Kangra? The story as developed by the respondents that the petitioner was deployed by a New Delhi based outsourcing agency with the respondent no. 1 is not convincing in the absence of any evidence to show that the petitioner was working in Delhi for some years and got thus himself enrolled with the respondent no.2 and incidentally was deployed at his home town in district Kangra. No application ever moved by the petitioner to the respondent no. 2 to get him enrolled on the rolls of the agency, has been placed on the record. Thus there is possibility that the name of the petitioner was got enrolled by the respondent no.1 on the rolls of the respondent no. 2 without making him aware of the consequences and the petitioner had no direct connection with the respondent no. 2. it is for this reason that the petitioner has not said even a single word in the application moved to the Labour Officer.

20. Secondly, the respondent no. 2 is not a registered outsourcing agency under Contract Labour (Regulation & Abolition), Act 1970. The respondent no. 1 has though tendered its Registration Certificate as Ext. RW1/B, but, no such Registration Certificate has been tendered on the record by the respondent no. 2. The alleged agreement Ext. RW2/B contains stipulation no. 8.1 to the effect that respondent no. 2 shall obtain all the registrations, permissions and licenses under labour and other laws. No such Certificate has been obtained at any point of time and placed on the record. It shows that the agreement is just a paper claim and was not supposed to be acted upon seriously. The purpose of registration of the company under Contract Labour(Regulation & Abolition), Act 1970 is to bring transparency in the matter of the deployment of labour and prevent the exploitation of the labour class. Why such an outsource company was chosen by the respondent no. 1, which was not even registered for this purpose? The answer to such a question is loud and clear that the respondents had entered the contract merely as a camouflage without actually intending to hire the labour on contract, but to show some paper work to prevent the workmen from claiming their legal rights against the respondent no. 1.

21. Thirdly, the respondent no. 1 has moved an application to the Labour Officer on 01 Feb 2015 mentioning therein the list of three contractors from whom workmen were engaged. As per this document Ext. PW5/H, three workmen were engaged from the respondent no. 2. The respondent no. 2 has filed on record the documents showing that as many as five workmen were engaged by the respondent no. 1. Reference may be made to the Pay-rolls Ext. RW2/D where the number of the workers has been shown as five. RW2 Sh. Madan Razzak has also stated in his cross-examination that as many as five workmen were supplied to the respondent no. 1 including the petitioner. Why such disparities are coming in the stand of both the respondents. Thus a false declaration was given to the labour Officer to the effect that strength of the workmen engaged through the respondent no. 2 was three. The respondents have not placed any demand letter issued by the respondent no. 1 to respondent no. 2 to show the genuineness of the dealings between the two. Every thing is shrouded in doubts giving rise to the impression that the respondent no. 2 was an extended arm of the respondent no. 1 and it was used to circumvent the provisions of the labour laws without anything more. Had the dealings in between the respondent no. 1 and 2 been fair and transparent, various letters showing the demand raised by the respondent no. 1 and the list of the workers supplied by the respondent no. 2 would have been filed on the record of this case to convince the court that there was no connivance between the two. Such letters would have been dated and dispatched in the regular course of the business and this court would have easily believed the same.

22. Fourthly, the plea of the respondent no. 2 that the petitioner allegedly tendered his resignation on 01.02.2015 is not proved. The petitioner has specifically alleged that he was thrown out of job by the respondent no. 1 on 31.12.2014. The respondents, on the other hand, have come up with the case that petitioner has in-fact tendered his resignation on 01.02.2015. No such resignation letter has been placed on the record nor the petitioner has been confronted with the

same. The respondent no. 2 has placed on the records the Pay-rolls of the petitioner w.e.f July 2014 to December 2014 showing that the petitioner has received the payment every month and signed the receipts. The document to this effect is Ext. RW2/D (six pages). If the petitioner had resigned on 01.02.2015, then he has worked till 31.01.2015 with the respondent no. 2. If it is so, then wages for the month of January 2015 must have been paid to him in the same manner as shown in Ext. RW2/D. Why the respondents have withheld the receipts of the petitioner for the month of January 2015 from this court when rest of all the receipts have been filed on the record. An inference can be drawn by the court to the effect that the petitioner has not worked in the month of January 2015 as he was thrown out of job on 31.12.2014 itself. This conclusion is strengthened by the contents of the application moved to get the PF of the petitioner. It has been marked as Mark R-1 and is not in dispute as it has been filed on the record by the respondents. It is very clear from this document that the date of leaving services was mentioned earlier as 31.12.2014 and later on it was converted as 01.02.2015 by way of overwriting. Had the petitioner worked in the month of January 2015, the payment receipts signed by him would have been placed on the record. Some cuttings/over-writings have been made on the form filled up under Employees Pensions Scheme. The signatures of the petitioner have been obtained on the blank forms. It is thus very much clear that the petitioner has infact worked till 31.12.2014 yet a false date of resignation was invented as 01.02.2015. The PF for the month of January 2015 was deposited without paying anything to the petitioner. All these facts suggests that the contract is merely a camouflage and nothing else and the petitioner was employee of the respondent no. 1 as he has worked with the respondent no. 1, but the paper work was done in such a manner that it could be proved that he was the workman of the respondent no. 2 and was engaged through outsource .

23. Lastly, the petitioner has tendered on the record the copy of his Saving Pass Book account showing all the transactions. It is clear from the page no. 3 of the Pass Book Ext. PW5/B that on 21.12.2015 Provident Fund amount of Rs. 13,895/-, 5355/- and 6275/- was credited in his account. Similarly, on 28.12.2015 a sum of Rs. 3060/- was again credited to his account. There is one letter Mark R-2 on the record. It is the document of the respondent no. 2. It is infact an extract of E-mail between the respondents. It has been mentioned in this document that a sum of Rs.6275/- and Rs.3060/- has been received as the PF amount pertaining to this petitioner Suresh. This amount thus tellies with the last two entries made in the pass Book of the petitioner Ext. PW5/D. The fact that draws the immediate attention is the previous two entries of the same date in the Saving Bank Account of the petitioner. Who deposited a sum of Rs.13,895/- and Rs.5355/- in his saving bank account describing the same as Provident fund in the account of the petitioner on the same date? When the respondent no. 2 has specifically mentioned in its Email that a sum of Rs.6275/- and Rs.3060/- has been received as the PF amount pertaining to this petitioner Suresh, it is but natural that the respondent no. 2 has not deposited a sum of Rs.13,895/- and Rs.5355/- as provident fund. A person can not work in two establishment at one point of time and two establishments can not deposit PF in his account for the same time? Then who deposited the amount Rs.13,895/- and Rs.5355/- in the account of the petitioner on the same date when the PF amount of the respondent no. 2 was deposited? Since the petitioner has specifically come up with the case that he was working with the respondent no. 1 since the year 2012, it can safely be presumed that this amount was deposited by the respondent no. 1 in the PF account of the petitioner. The respondent no. 1 was at liberty to examine the officials from the bank to prove that this amount was deposited by someone else. When the petitioner has filed his Saving Bank Account details on the record and stated on oath he was an employee of the respondent no. 1, the onus had shifted upon the respondent no. 1 to expose the petitioner by leading evidence, in case, the petitioner was not working with it. The manner in which two different Provident Fund amounts were deposited in the account of the petitioner on the same date shows the connivance in between the respondents. It proves that the services of the petitioner were converted on the papers from the rolls of the respondent no. 1 into the rolls of the respondent no. 2 without letting him know of the fact that his services were terminated from the rolls of the respondent no. 1. The payment of the Provident

Fund amount was intentionally delayed so that the petitioner does not come to know that his services have been terminated by the respondent no. 1 and his Provident Fund has been paid to him. Both the Provident Funds were paid to him after the petitioner was terminated from the rolls of the respondent no. 2. Otherwise, there could be no such coincidence that the petitioner will get two different amounts of the provident fund on the same date when he was working only with one respondent. This evidence also lead to the only inference to the effect that the petitioner was employ of the respondent no. 1 and he was terminated on the papers and enrolled with the respondent no.2 and then shown to have been deployed with the respondent no. 1 as a contract labour without letting the petitioner to know all this as he worked throughout with the petitioner no 1 in the same manner.

24. For the sake of repetition, when the petitioner has examined Shri Naveen Kumar (PW2) and Shri Tarsem (PW4) to prove that he was working with the respondent no.1 since the year 2012, it was for the respondent no.1 to lead evidence to meet this case by producing the records of the company pertaining to the year 2012 and 2013. The respondent no.1 being an organized company should not have hesitated in placing on record the attendance register of the Nagrota Bagwan and Dharamshala branches pertaining to the years 2012 and 2013 so that it could be shown that neither the name of the petitioner was mentioned anywhere in the attendance register nor any presence was marked by him at any point of time. Any other workman of the respondent no.1 could have come forward and deposed that he had neither seen the petitioner in Dharamshala branch nor in Nagrota Bagwan branch at any point of time. The petitioner has not only produced two witnesses in support to his case but has also placed on record the extracts of Saving Pass Book showing that a fixed amount was deposited regularly in his account for some of the months by the respondent no.1 as wages. The petitioner has stated on oath that for some of the months he was paid in cash. Nothing more could he have brought on the record. The petitioner has done his best to produce the best available material in his possession and power. Nothing more is expected from him. In civil cases 'proof beyond reasonable doubt' is not the standard. Such case are to be established on the scale of 'preponderance of probabilities'. The petitioner has succeeded to meet the standard and the respondent no.1 has not been able to prove that the petitioner was a stranger to it. In such a situation entering into an contract with the respondent no.2 and doing some paper work with it without terminating the services of the petitioner in public view, the connivance between the respondent no.1 and respondent no.2 is established and contract is proved to be a camouflage merely to show that petitioner was an employee of the contractor so that he could not claim any rights available to him under the law. The connivance between the respondent no.1 and respondent no.2 is proved writ large from the extract of the Saving Bank Account of the petitioner wherein after his alleged resignation the amount of Provident Fund by two different sources has been credited. In case, the petitioner was a workman of respondent no.2 alone and, in case, he had been working with respondent no.2 from July 2014 there would have been the Provident Fund amount only for seven months which could not have been more than ten thousand approximately. When a sum of rupees around nineteen thousand is credited in his account as a provident Fund apart from the sum of Rs. Around ten thousands, the onus certainly had shifted upon the respondent no.1 to prove that this amount was not credited by it and it was an act of someone else.

25. The learned Authorized Representative for the respondents has argued that no identity card ever issued in favour of the petitioner has been proved by him on the record, and therefore, it can not be said that the petitioner was employee of the respondent no.1. When the petitioner has alleged the specific connivance between respondent no.1 and respondent no.2, therefore, it is but natural that no identity cards were issued to him and other so that the petitioner could not claim any right subsequently. Had the respondent no.1 been issuing identity card to its employees even in the years 2012-2013 evidence could have been led by the respondent no. 1 before court. Had any such evidence been led by the respondent no.1, the court could have presume that the petitioner had not worked with the respondent no.1, and for this reason he had failed to prove his identity card on the

record when identity cards were issued to all the workmen by the company in the year 2012 and 2013. So far as cross-examination conducted upon the witnesses of the respondents is concerned, it is to be remembered that cross-examination was not conducted by professional advocate but by the Authorized Representative, who are not professionally trained in the art of cross-examination and they do not possess expertise of the advocates, hence the cross-examination is not to be treated very seriously. There is nothing in the cross-examination conducted upon the witnesses to show that the petitioner has himself damaged his own case. Preference has to be given to the documentary material on the record. The petitioner has examined Shri Rishab Chaudhary as PW1 who has proved for formal proceedings like letter Ext.PW1/A, Ext. PW1/B, proceedings Ext.PW1/C to Ext. PW1/E which are not very material to clinch the issue. Similarly one Shri Amit Chaudhary has tendered on record copy of conciliation meeting as Ext.PW3/A this is also not very material as there is other material already discussed on the record which is sufficient to clinch the issue.

26. In view of the aforesaid discussion it is held that the petitioner was working with the respondent no.1 since the year 2012 and the respondent no.1 in connivance with respondent no.2 did the paper work showing that the petitioner was engaged through the contractor in July, 2014 and he resigned in February, 2015 and worked for only 210 days. It is rather proved on the record from the material already discussed that the petitioner had been working with respondent no.1 since the year 2012 and only paper work was done without his knowledge to show that he had been working with respondent no.1 only for seven months and that too through the contractor, the respondent no. 2. It is also proved that when the services of the petitioner were shown as terminated on account of his alleged resignation, only thereafter Provident Fund by two separate sources was deposited in his account which shows that respondent no.1 intentionally delayed the payment of Provident Fund so that the petitioner does not realize that he has been terminated from the respondent no.1 and was shown to have been working through respondent no. 2. The petitioner is labourer by professional and he was earning a sum of rupees around five thousand per month. He can not be expected to remain vigilant at the time of signing document and a labourer cannot be expected to be well conversant with his legal rights. A labourer believes in doing the work and he is more concerned about his work rather than the manner in which documents are being prepared by the employer. Since the petitioner is proved to have been worked with the respondent no.1 w.e.f. 09.11.2012, therefore, it is proved that he has worked for 240 days in the preceding 12 calendar months as his induction through the respondent no.2 is proved to have been done behind his back and the contract between the respondent no.1 and respondent no.2 has been held as a camouflage and sham document merely to frustrate the rights of the petitioner and likewise labourers. Therefore, the respondent no.1 has caused violation of Section 25-F of the Act in this case.

27. It may be stated here that the petitioner has neither alleged the violation of Sections 25-G and nor violation of Section 25-H of the Act. There are neither pleadings nor evidence on the record to prove that the services of the junior persons were retained, whereas, the services of the petitioner were dispensed with. There is also no evidence on the record to show that fresh hands were also engaged by the respondent no.1 after the services of the petitioner were terminated. Thus the only violation proved on the record is that of Section 25-F of the Act as the services of the petitioner were terminated without compliance of the aforesaid section.

28. It is also settled law that when there is violation of Section 25-F of the Act alone, the appropriate remedy is that of grant of compensation as a daily wage worker works against no post and can not claim any rights against any permanent post. It is well settled law that, in case, such a workman is reinstated by the orders of the court, the employer is always at liberty to comply with the provisions contained in Section 25-F of the Act and terminate the services of the workman soon thereafter. In such a situation, the order of the reinstatement is frustrated by the operation of the law. For these reasons, it is settled law that when there is no violation of Sections 25-G and 25-H, a workman who has been terminated in violation of the provisions of Section 25-F of the Act needs to be compensated rather than reinstated.

29. For the aforesaid discussion it is proved that there exists relationship of employer and employee between petitioner and respondent no.1. The respondent no.2 for the reasons discussed hereinabove is only proved to be a company associated only for the paper work and thus the main relationship is between the petitioner and the respondent no.1 and respondent no.2 is proved only a facilitating agency to circumvent the beneficial provisions of the labour law. It is also proved that the services of the petitioner were terminated on 31.12.2014 rather than on 01.02.2015. It is not proved that the petitioner has tendered his resignation as no such document has been placed on the record and no pay rolls for the month of January, 2015 have also been placed on the record.

30. Taking into account various facts and circumstances of the case already discussed hereinabove ends of the justice will be met and the purpose of invoking the provisions of beneficial legislation shall be achieved, in case, the petitioner is held entitled to receive of Rs.2,00,000/- as compensation from the respondent no.1 for the violation of the legal provisions caused by the respondent. Hence, all the issues are decided accordingly.

Issues No. 3, 5 and 6

31. The petitioner is proved to have approached with clean hands as he has placed everything in his possession and powers before the court. Rather, the respondents are proved to have not come to the court with clean hands as many material documents were not placed before the court on their behalf. Claim petition is held to be maintainable and this court has the jurisdiction to deal with the same. Issues no.3, 5 and 6 are held answered against the respondents.

RELIEF

32. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-F of the Act, in this situation, reinstatement and other consequential benefits cannot be granted in his favour therefore, petitioner is held entitled for compensation to the tune of ₹ 2,00,000/- (Rupees two lakhs only), which would be paid within four months by the respondent no.1 and from the date of receipt of Award failing which the respondent No.1 shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

33. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 29th day of August, 2022.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA

Ref. No. : 105/2017
Date of Institution : 28-03-2017

Date of Decision : 31-08-2022

The President/Secretary, Springer Cozy Touch Polyfoam Workers Union, c/o Shri Gurnam Singh, Village Majra, P.O. Sanoli, Tehsil & District Una, H.P. . .Petitioners.

Versus

The General Manager, M/s Springer Mattresses/Cozy Touch Polyfoam Limited, Village Heer Thada (Laluwal), P.O. Bidharwal, Tehsil Haroli, District Una, H.P. . . Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioners : None
For the respondent : Sh. Yatish J.P., Ld. Adv. and
Sh. Manish Kumar (Assistant Manager)

AWARD

The following reference has been received from the appropriate Government for adjudication under Section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether the demands raised by the President/Secretary, Springer Cozy Touch Polyfoam Worker Union, c/o Shri Gurnam Singh, Village Majra, P.O. Sanoli, Tehsil & District Una, H.P. *vide* demand notice 19.08.2015 (Copy enclosed) before the General Manager, M/s Springer Mattresses/Cozy Touch Polyfoam Limited, Village Heer Thada (Laluwal), P.O. Bidharwal, Tehsil Haroli, District Una, H.P., is tenable legal and justified? If yes, what relief of past service benefits the above workmen of the above employees Union entitled as per demand notice? If not, what its legal effects?”

2. The claim was filed by the petitioners in the capacity of the President/Secretary of the worker union and as many as ten demands were pleaded. These demands were firstly mentioned in the demand charter and conciliation took place before the Conciliation Officer but no amicable settlement could have arrived hence the reference was made. These demands in nutshell, pertained to issuance of identity cards the workmen by the respondent, issuance of attendance/casual cards, making of provision for CL, EL, sick leave etc. and the fourth demand was with regard to grant of earned leave as per the provisions of Factories Act, 1948 as well as H.P. Industrial Employment Casual & Sick Leave Rules, 1969. The petitioners raised demand of 20% increment to all the workers *w.e.f.* 01.9.2015, equal pay for equal work, making provision of cycle stand, drinking water, toilet, bathrooms, to the workmen. Further demand was with respect to two cups of tea to all workmen under Factory Rules during the working hours. The last demand pertained to make the provision for uniforms, soaps, safety shoes, safety maces etc. All these demands were as per the provisions of various laws dealing with the workmen.

3. The respondent has resisted and contested the petition and took pleas in the reply the respondent in nutshell submitted that the facilities demanded by the workmen had already been provided to the workmen hence the petition was not maintainable.

4. The petitioners filed rejoinder and re-affirmed the averments made in the petition and denied those made in the reply.

5. I have heard learned Counsel for the respondent at length and considered the material on record

6. An application under Section 11 (3) of the Act was also filed and was allowed and some documents were supplied and other were in the process were being supplied. Thereafter the petitioners started absenting themselves and learned counsel for the petitioners pleaded no instructions therefore notices issued to the Pradhan/Secretary for the workers union and they were also served but none came forwarded and had to be proceeded against *ex parte*.

7. No evidence thus led by the petitioners in support of the demands mentioned in the claim petition. It appears that there had been either some settlement between the parties or the union has been dissolved or the facilities were being provided by the respondent to the workmen and for this reasons though union is not interested to further pursuing the matter, the reasons whatever may the fact remains that no evidence has been led by the petitioners in support of the demands mentioned in the demand charter and denial of the those demands by the respondent. When there is no evidence on the record in support of the averments made in the claim petition the petition is therefore decided against the petitioners and the reference is answered in negative. Parties are left to bear their costs.

8. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of August, 2022.

Sd/-
 (HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-171001, the 28th September, 2021

No. 11-1/85(Lab)ID/2021-Kangra.—It appears to the undersigned that an industrial dispute exists between Shri Dalip Chand s/o Shri Chandu Ram, r/o V.P.O. Deol, Tehsil Baijnath, District Kangra, H.P. and (1) The Chairman, M/s SPML Infra Limited, 22, Camac Street, 3rd Floor, Block-A, Kolkata, (2) The General Manager, M/s SPML Infra Limited, Near Chimalhaar Home Stay, Chimalhaar, P.O. Geetapeeth, Palampur, District Kangra, H.P., (3) The Deputy General Manager, M/s SPML Infra Limited, Near Chimalhaar Home Stay, Chimalhaar, P.O. Geetapeeth, Palampur, District Kangra, H.P. on the issue of alleged termination from services *w.e.f.* 23-12-2019.

As per the report under Section 12(4) of the Industrial Disputes Act, 1947 submitted by the Labour Inspector-cum-Conciliation Officer, Palampur, District Kangra, H.P., he tried his level best to settle the dispute during conciliation proceedings but could not succeed. The report so received has been considered by the undersigned and as per power vested under sub-section 5 of Section 12 of the Act *ibid*, the undersigned has formed an opinion and decided that this dispute is required to be legally adjudicated by the Labour Court/ Industrial Tribunal.

Therefore, the undersigned while exercising the powers of appropriate Government vested in me *vide* Himachal Pradesh Government Notification No. Shram (A) 4-9/2006-IV-Loose, dated 15th February, 2014 and as per power vested under sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal, Kangra at Dharamshala, District Kangra, H.P. constituted under Section 7 of Act *ibid*, on the following issue/ issues for legal adjudication:—

“Whether the termination of services of Shri Dalip Chand s/o Shri Chandu Ram, r/o V.P.O. Deol, Tehsil Baijnath, District Kangra, H.P. *w.e.f.* 23-12-2019 (as alleged by workman) by (1) The Chairman, M/s SPML Infra Limited, 22, Camac Street, 3rd Floor, Block-A, Kolkata, (2) The General Manager, M/s SPML Infra Limited, Near Chimalhaar Home Stay, Chimalhaar, P.O. Geetapeeth, Palampur, District Kangra, H.P., (3) The Deputy General Manager, M/s SPML Infra Limited, Near Chimalhaar Home Stay, Chimalhaar, P.O. Geetapeeth, Palampur, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers/management?”

Sd/-
Joint Labour Commissioner.

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-171001, the 3rd August, 2021

No. 11-1/85(Lab)ID/2021-Kangra.—It appears to the undersigned that an industrial dispute exists between Shri Madan Lal s/o Shri Prem Chand, r/o V.P.O. Bahtu-Samula, Tehsil Palampur, District Kangra, H.P. and the Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. on the issue of alleged illegal termination from services during March, 2020.

As per the report under Section 12(4) of the Industrial Disputes Act, 1947 submitted by the Labour Inspector-cum-Conciliation Officer, Kangra at Dharamshala, District Kangra, H.P., he tried his level best to settle the dispute during conciliation proceedings but could not succeed. The report so received has been considered by the undersigned and as per power vested under sub-section 5 of Section 12 of the Act *ibid*, the undersigned has formed an opinion and decided that this dispute is required to be legally adjudicated by the Labour Court/ Industrial Tribunal.

Therefore, the undersigned while exercising the powers of appropriate Government vested in me *vide* Himachal Pradesh Government Notification No. Shram (A) 4-9/2006-IV-Loose, dated 15th February, 2014 and as per power vested under sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal, Kangra at Dharamshala, District Kangra, H.P. constituted under Section 7 of Act *ibid*, on the following issue/ issues for legal adjudication:—

“Whether the termination of services of Shri Madan Lal s/o Shri Prem Chand, r/o V.P.O. Bahtu-Samula, Tehsil Palampur, District Kangra, H.P. by the Proprietor, M/s New Prem Bus Service, V.P.O. Nagrota Bagwan, District Kangra, H.P. during March, 2020 without

complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

Sd/-
Joint Labour Commissioner.

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-171001, the 21st March, 2022

No. 11-1/11(Lab)ID/2022-Nurpur.—It appears to the undersigned that an industrial dispute exists between Shri Malkeet Singh s/o Shri Pritam Singh, r/o V. P.O. Talara, Tehsil Fatehpur, District Kangra, H.P. and (i) The Executive Engineer, I & PH Division, Nurpur, District Kangra, H.P. (Principal Employer), (ii) The Proprietor, M/s Vishwakarma Engineering Services Jachh, P.O. Jassur, Tehsil Nurpur, District Kangra, H.P. (Contractor) on the issue of alleged illegal termination from services *w.e.f.* 19-06-2019.

As per the report under Section 12(4) of the Industrial Disputes Act, 1947 submitted by the Labour Inspector-*cum*-Conciliation Officer, Nurpur, District Kangra, H.P., he tried his level best to settle the dispute during conciliation proceedings but could not succeed. The report so received has been considered by the undersigned and as per power vested under sub-section 5 of Section 12 of the Act *ibid*, the undersigned has formed an opinion and decided that this dispute is required to be legally adjudicated by the Labour Court/Industrial Tribunal.

Therefore, the undersigned while exercising the powers of appropriate Government vested in me *vide* Himachal Pradesh Government Notification No. Shram (A) 4-9/2006-IV-Loose, dated 15th February, 2014 and as per power vested under sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal, Kangra at Dharamshala, District Kangra, H.P. constituted under Section 7 of Act *ibid*, on the following issue/ issues for legal adjudication:—

"Whether the termination of services of Shri Malkeet Singh s/o Shri Pritam Singh, r/o V. P.O. Talara, Tehsil Fatehpur, District Kangra, H.P. by (i) the Executive Engineer, I & PH Division, Nurpur, District Kangra, H.P. (Principal Employer), (ii) The Proprietor, M/s Vishwakarma Engineering Services Jachh, P.O. Jassur, Tehsil Nurpur, District Kangra, H.P. (Contractor) *w.e.f.* 19-06-2019 (as alleged by workman), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, compensation and past service benefits the above worker is entitled to from the above employers?"

Sd/-
Joint Labour Commissioner.

LABOUR & EMPLOYMENT DEPARTMENT**NOTIFICATION***Shimla-171001, the 31st January, 2022*

No. 11-23/84(Lab)ID/2022-Una.— It appears to the undersigned that an industrial dispute exists between Shri Manjeet Parmar s/o Shri Gurdev Singh, r/o Village Dharampur, Tehsil Mukerian, District Hoshiarpur, Punjab and (i) The Managing Director, M/s Jindal Medicot Limited, V.P.O. Thathal, Tehsil Amb, District Una, H.P. (ii) The Factory Manager, M/s Jindal Medicot Limited, V.P.O. Thathal, Tehsil Amb, District Una, H.P. on the issue of alleged illegal termination from services *w.e.f.* 14-07-2021.

As per the report under Section 12(4) of the Industrial Disputes Act, 1947 submitted by the Labour Inspector-cum-Conciliation Officer, Amb, District Una, H.P., he tried his level best to settle the dispute during conciliation proceedings but could not succeed. The report so received has been considered by the undersigned and as per power vested under sub-section 5 of Section 12 of the Act *ibid*, the undersigned has formed an opinion and decided that this dispute is required to be legally adjudicated by the Labour Court/ Industrial Tribunal.

Therefore, the undersigned while exercising the powers of appropriate Government vested in me *vide* Himachal Pradesh Government Notification No. Shram (A) 4-9/2006-IV-Loose, dated 15th February, 2014 and as per power vested under sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal, Kangra at Dharamshala, District Kangra, H.P. constituted under Section 7 of Act *ibid*, on the following issue/issues for legal adjudication:—

“Whether the termination of services of Shri Manjeet Parmar s/o Shri Gurdev Singh, r/o Village Dharampur, Tehsil Mukerian, District Hoshiarpur, Punjab by (i) The Managing Director, M/s Jindal Medicot Limited, V.P.O. Thathal, Tehsil Amb, District Una, H.P., (ii) The Factory Manager, M/s Jindal Medicot Limited, V.P.O. Thathal, Tehsil Amb, District Una, H.P. *w.e.f.* 14-07-2021, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, compensation and past service benefits the above worker is entitled to from the above employer/management?”

Sd/-
Joint Labour Commissioner.

LABOUR & EMPLOYMENT DEPARTMENT**NOTIFICATION***Shimla-171001, the 22nd June 2022*

No. 11-23/84(Lab)ID/2022-Una.—It appears to the undersigned that an industrial dispute exists between Smt. Maya Devi w/o Shri Hans Ram and Smt. Kiran Bala w/o Shri Rajesh Sharma through Shri Rakesh Sharma, State President (BMS), Ward No.-9, Near Geeta Bhawan, Municipal Committee, Santoshgarh, Tehsil & District Una, H.P. and (i) The Executive Director (Personnel), H.P. State Electricity Board Limited, Vidyut Bhawan, Kumar House, Shimla, (ii) The Senior

Executive Engineer, Electrical System Division, H.P.S.E.B.L., Rakkar, Una, District Una, H.P. regarding regularization of their services by the employer.

As per the report under Section 12(4) of the Industrial Disputes Act, 1947 submitted by the Labour Officer-cum-Conciliation Officer, Una, District Una, H.P., he tried his level best to settle the dispute during conciliation proceedings but could not succeed. The report so received has been considered by the undersigned and as per power vested under sub-section 5 of Section 12 of the Act *ibid*, the undersigned has formed an opinion and decided that this dispute is required to be legally adjudicated by the Labour Court/ Industrial Tribunal.

Therefore, the undersigned while exercising the powers of appropriate Government vested in me *vide* Himachal Pradesh Government Notification No. Shram (A) 4-9/2006-IV-Loose, dated 15th February, 2014 and as per power vested under sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal, Kangra at Dharamshala, District Kangra, H.P. constituted under Section 7 of Act *ibid*, on the following issue/ issues for legal adjudication:—

“Whether the demand of Smt. Maya Devi w/o Shri Hans Ram and Smt. Kiran Bala w/o Shri Rajesh Sharma through Shri Rakesh Sharma, State President (BMS), Ward No.-9, Near Geeta Bhawan, Municipal Committee, Santoshgarh, Tehsil & District Una, H.P. regarding regularization of their services raised *vide* demand notice dated 31-07-2020 (as alleged by workman) to be fulfilled by (i) The Executive Director (Personnel), H.P. State Electricity Board Limited, Vidyut Bhawan, Kumar House, Shimla, (ii) The Senior Executive Engineer, Electrical System Division, H.P.S.E.B.L., Rakkar, Una, District Una, H.P., is legal and justified? If yes, to what relief, service benefits above workmen are entitled to from the above employers?”

Sd/-
Joint Labour Commissioner.

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-171001, the 4th May, 2022

No. 11-1/85(Lab)ID/2022-Dehra.—It appears to the undersigned that an industrial dispute exists between Smt. Maya Devi w/o Late Shri Kamal Kumar, r/o Village Ward No.-1, Joratal, P.O. & Tehsil Jawalamukhi, District Kangra, H.P. and the Block Medical Officer-cum-Chairman, Executive Committee, Rogi Kalyan Samiti, Civil Hospital, Jawalamukhi, District Kangra, H.P. on the issue of her alleged illegal termination from services *w.e.f.* 01-01-2022.

As per the report under Section 12(4) of the Industrial Disputes Act, 1947 submitted by the Labour Inspector-cum-Conciliation Officer, Dehra, District Kangra, H.P., he tried his level best to settle the dispute during conciliation proceedings but could not succeed. The report so received has been considered by the undersigned and as per power vested under sub-section 5 of Section 12 of the Act *ibid*, the undersigned has formed an opinion and decided that this dispute is required to be legally adjudicated by the Labour Court/Industrial Tribunal.

Therefore, the undersigned while exercising the powers of appropriate Government vested in me *vide* Himachal Pradesh Government Notification No. Shram (A) 4-9/2006-IV-Loose, dated 15th February, 2014 and as per power vested under sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal, Kangra at Dharamshala, District Kangra, H.P. constituted under Section 7 of Act *ibid*, on the following issue/ issues for legal adjudication:—

“Whether the termination of services of Smt. Maya Devi w/o Late Shri Kamal Kumar r/o Village Ward No.-1, Joratal, P.O. & Tehsil Jawalamukhi, District Kangra, H.P. by the Block Medical Officer-cum-Chairman, Executive Committee, Rogi Kalyan Samiti, Civil Hospital, Jawalamukhi, District Kangra, H.P. *w.e.f.* 01-01-2022, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

Sd/-
Joint Labour Commissioner.

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-171001, the 4th May, 2022

No. 11-1/85(Lab)ID/2022-Dehra.—It appears to the undersigned that an industrial dispute exists between Smt. Krishna Devi w/o Late Shri Amin Chand, r/o Village Rukval Lahad, P.O. Ghalour, Tehsil Jawalamukhi, District Kangra, H.P. and the Block Medical Officer-cum-Chairman, Executive Committee, Rogi Kalyan Samiti, Civil Hospital, Jawalamukhi, District Kangra, H.P. on the issue of her alleged illegal termination from services *w.e.f.* 01-01-2022.

As per the report under Section 12(4) of the Industrial Disputes Act, 1947 submitted by the Labour Inspector-cum-Conciliation Officer, Dehra, District Kangra, H.P., he tried his level best to settle the dispute during conciliation proceedings but could not succeed. The report so received has been considered by the undersigned and as per power vested under sub-section 5 of Section 12 of the Act *ibid*, the undersigned has formed an opinion and decided that this dispute is required to be legally adjudicated by the Labour Court/ Industrial Tribunal.

Therefore, the undersigned while exercising the powers of appropriate Government vested in me *vide* Himachal Pradesh Government Notification No. Shram (A) 4-9/2006-IV-Loose, dated 15th February, 2014 and as per power vested under sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal, Kangra at Dharamshala, District Kangra, H.P. constituted under Section 7 of Act *ibid*, on the following issue/ issues for legal adjudication:—

“Whether the termination of services of Smt. Krishna Devi w/o Late Shri Amin Chand, r/o Village Rukval Lahad, P.O. Ghalour, Tehsil Jawalamukhi, District Kangra, H.P. by the Block Medical Officer-cum-Chairman, Executive Committee, Rogi Kalyan Samiti, Civil Hospital, Jawalamukhi, District Kangra, H.P. *w.e.f.* 01-01-2022, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of

back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

Sd/-
Joint Labour Commissioner.

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-171001, the 11st February, 2021

No. 11-23/84(Lab)ID/2021-Mandi.—It appears to the undersigned that an industrial dispute exists between Shri Kuldeep Singh s/o Shri Seglu Ram, r/o Village Kasarla, P.O. Ratti, Tehsil Balh, District Mandi, H.P. and the Director, Satvik Agro Tech. Private Limited, 5A, Industrial Area Ratti, Nerchowk, Tehsil Balh, District Mandi, H.P. on the issue of alleged illegal termination from services *w.e.f.* 28-06-2018.

As per the report under Section 12(4) of the Industrial Disputes Act, 1947 submitted by the Labour Inspector-cum-Conciliation Officer, Mandi, District Mandi, H.P., she tried her level best to settle the dispute during conciliation proceedings but could not succeed. The report so received has been considered by the undersigned and as per power vested under sub-section 5 of Section 12 of the Act *ibid*, the undersigned has formed an opinion and decided that this dispute is required to be legally adjudicated by the Labour Court/ Industrial Tribunal.

Therefore, the undersigned while exercising the powers of appropriate Government vested in me *vide* Himachal Pradesh Government Notification No. Shram (A) 4-9/2006-IV-Loose, dated 15th February, 2014 and as per power vested under sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal, Kangra at Dharamshala, District Kangra, H.P. constituted under Section 7 of Act *ibid*, on the following issue/ issues for legal adjudication:—

“Whether the termination of services of Shri Kuldeep Singh s/o Shri Seglu Ram, r/o Village Kasarla, P.O. Ratti, Tehsil Balh, District Mandi, H.P. *w.e.f.* 28-06-2018 by the Director, Satvik Agro Tech. Private Limited, 5A, Industrial Area Ratti, Nerchowk, Tehsil Balh, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/ management?”

Sd/-
Joint Labour Commissioner.

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-171001, the 25th March, 2021

No. 11-5/99(Lab)ID/2021-Chamba.—It appears to the undersigned that an industrial dispute exists between Shri Kuwar Dev s/o Shri Roop Singh, r/o Village Dalinjan, P.O. Tikriigarh,

Tehsil Churah, District Chamba, H.P. and the Managing Director, I.A. Energy, 36MW, Power Project Chanju-I, Kathwar, Tehsil Churah, District Chamba, H.P. on the issue of his alleged verbal termination from services *w.e.f.* 01-04-2017.

As per the report under Section 12(4) of the Industrial Disputes Act, 1947 submitted by the Labour Inspector-*cum*-Conciliation Officer, Chamba, District Chamba, H.P., he tried his level best to settle the dispute during conciliation proceedings but could not succeed. The report so received has been considered by the undersigned and as per power vested under sub-section 5 of Section 12 of the Act *ibid*, the undersigned has formed an opinion and decided that this dispute is required to be legally adjudicated by the Labour Court/ Industrial Tribunal.

Therefore, the undersigned while exercising the powers of appropriate Government vested in me *vide* Himachal Pradesh Government Notification No. Shram (A) 4-9/2006-IV-Loose, dated 15th February, 2014 and as per power vested under sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal, Kangra at Dharamshala, District Kangra, H.P. constituted under Section 7 of Act *ibid*, on the following issue/ issues for legal adjudication:—

“Whether the verbal termination of services of Shri Kuwar Dev s/o Shri Roop Singh, r/o Village Dalinjan, P.O. Tikrigarh, Tehsil Churah, District Chamba, H.P. *w.e.f.* 01-04-2017 by the Managing Director, I.A. Energy, 36MW, Power Project Chanju-I, Kathwar, Tehsil Churah, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

Sd/-
Deputy Labour Commissioner.

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-171001, the 25th March, 2021

No. 11-5/99(Lab)ID/2021-Chamba.—It appears to the undersigned that an industrial dispute exists between Shri Lal Chand s/o Shri Hukam Chand, r/o Village Kuhan, P.O. Tikrigarh, Tehsil Churah, District Chamba, H.P. and the Managing Director, I.A. Energy, 36MW, Power Project Chanju-I, Kathwar, Tehsil Churah, District Chamba, H.P. on the issue of his alleged verbal termination from services *w.e.f.* 01-04-2017.

As per the report under Section 12(4) of the Industrial Disputes Act, 1947 submitted by the Labour Inspector-*cum*-Conciliation Officer, Chamba, District Chamba, H.P., he tried his level best to settle the dispute during conciliation proceedings but could not succeed. The report so received has been considered by the undersigned and as per power vested under sub-section 5 of Section 12 of the Act *ibid*, the undersigned has formed an opinion and decided that this dispute is required to be legally adjudicated by the Labour Court/ Industrial Tribunal.

Therefore, the undersigned while exercising the powers of appropriate Government vested in me *vide* Himachal Pradesh Government Notification No. Shram (A) 4-9/2006-IV-Loose, dated 15th February, 2014 and as per power vested under sub-section 1 of Section 10 of the Industrial

Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal, Kangra at Dharamshala, District Kangra, H.P. constituted under Section 7 of Act *ibid*, on the following issue/ issues for legal adjudication:—

“Whether the verbal termination of services of Shri Lal Chand s/o Shri Hukam Chand, r/o Village Kuhan, P.O. Tikrigarh, Tehsil Churah, District Chamba, H.P. *w.e.f.* 01-04-2017 by the Managing Director, I.A. Energy, 36MW, Power Project Chanju-I, Kathwar, Tehsil Churah, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

Sd/-
Deputy Labour Commissioner.

LABOUR & EMPLOYMENT DEPARTMENT

CORRIGENDUM

Shimla-171001, the 27th December, 2021

No. 11-1/95(Lab)ID/2019/Kinnaur/Lobzang Namgial.—Whereas, an alleged industrial dispute exists between Shri Lobzang Namgial s/o Shri Chhimed Landup, r/o V.P.O. Dhankhar, Tehsil Kaza, District Lahaul & Spiti, H.P. and the Executive Engineer, H.P.P.W.D., B & R Division Kaza, District Lahaul & Spiti, H.P.

Whereas, a reference has been made to the Ld. Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, District Kangra, H.P. *vide* notification of even no. dated 28-03-2019 for legal adjudication. However, inadvertently the correct facts could not be mentioned about the time to time termination of the services of the workman in the said notification. Therefore, the time to time termination of services of the workman may be read as “during March, 2014 to year, 2017 and final termination during the year, 2017” instead of “during December, 2016” as alleged by workman.

Sd/-
Joint Labour Commissioner.

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-171001, the 29th September, 2021

No. 11-1/85(Lab)ID/2021-Kangra.—It appears to the undersigned that an industrial dispute exists between Shri Madan Lal s/o Shri Roshan Lal, r/o V.P.O. Deol, Tehsil Baijnath, District Kangra, H.P. and (1) The Chairman, M/s SPML Infra Limited, 22, Camac Street, 3rd Floor, Block-A, Kolkata, (2) The General Manager, M/s SPML Infra Limited, Near Chimalhaar Home Stay, Chimalhaar, P.O. Geetapeeth, Palampur, District Kangra, H.P., (3) The Deputy General

Manager, M/s SPML Infra Limited, Near Chimalhaar Home Stay, Chimalhaar, P.O. Geetapeeth, Palampur, District Kangra, H.P. on the issue of alleged termination from services *w.e.f.* 23-12-2019.

As per the report under Section 12(4) of the Industrial Disputes Act, 1947 submitted by the Labour Inspector-*cum*-Conciliation Officer, Palampur, District Kangra, H.P., he tried his level best to settle the dispute during conciliation proceedings but could not succeed. The report so received has been considered by the undersigned and as per power vested under sub-section 5 of Section 12 of the Act *ibid*, the undersigned has formed an opinion and decided that this dispute is required to be legally adjudicated by the Labour Court/Industrial Tribunal.

Therefore, the undersigned while exercising the powers of appropriate Government vested in me *vide* Himachal Pradesh Government Notification No. Shram (A) 4-9/2006-IV-Loose, dated 15th February, 2014 and as per power vested under sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal, Kangra at Dharamshala, District Kangra, H.P. constituted under Section 7 of Act *ibid*, on the following issue/ issues for legal adjudication:—

“Whether the termination of services of Shri Madan Lal s/o Shri Roshan Lal, r/o V.P.O. Deol, Tehsil Baijnath, District Kangra, H.P. *w.e.f.* 23-12-2019 (as alleged by workman) by (1) The Chairman, M/s SPML Infra Limited, 22, Camac Street, 3rd Floor, Block-A, Kolkata, (2) The General Manager, M/s SPML Infra Limited, Near Chimalhaar Home Stay, Chimalhaar, P.O. Geetapeeth, Palampur, District Kangra, H.P., (3) The Deputy General Manager, M/s SPML Infra Limited, Near Chimalhaar Home Stay, Chimalhaar, P.O. Geetapeeth, Palampur, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers/management?”

Sd/-
Joint Labour Commissioner.

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-171001, the 21st March, 2022

No. 11-23/84(Lab)ID/2022-Una.—It appears to the undersigned that an industrial dispute exists between Smt. Kamlesh Devi w/o Shri Ram Prakash, r/o V.P.O. Dulehad, Tehsil Dulehad, District Una, H.P. and the Managing Director, M/s Swisskem Healthcare, V.P.O. Bela Bathri, Tehsil Haroli, District Una, H. P. on the issue of alleged illegal termination from services *w.e.f.* 14-08-2021.

As per the report under Section 12(4) of the Industrial Disputes Act, 1947 submitted by the Labour Inspector-*cum*-Conciliation Officer, Tahlial Circle, District Una, H.P., he tried his level best to settle the dispute during conciliation proceedings but could not succeed. The report so received has been considered by the undersigned and as per power vested under sub-section 5 of Section 12 of the Act *ibid*, the undersigned has formed an opinion and decided that this dispute is required to be legally adjudicated by the Labour Court/ Industrial Tribunal.

Therefore, the undersigned while exercising the powers of appropriate Government vested in me *vide* Himachal Pradesh Government Notification No. Shram (A) 4-9/2006-IV-Loose, Dated 15th February, 2014 and as per power vested under sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal, Kangra at Dharamshala, District Kangra, H.P. constituted under Section-7 of Act *ibid*, on the following issue/ issues for legal adjudication:—

“Whether the termination of services of Smt. Kamlesh Devi w/o Shri Ram Prakash, r/o V.P.O. Dulehad, Tehsil Dulehad, District Una, H.P. by the Managing Director, M/s Swisskem Healthcare, V.P.O. Bela Bathri, Tehsil Haroli, District Una, H.P. *w.e.f.* 14-08-2021 (as alleged by workman) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, compensation and past service benefits the above worker is entitled to from the above employer/management?”

Sd/-
Joint Labour Commissioner.

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-171001, the 3rd August, 2021

No. 11-5/99(Lab)ID/2021-Chamba.—It appears to the undersigned that an industrial dispute exists between Shri Karam Singh s/o Shri Rattan Chand, r/o Village Samot, P.O. Tarella, Tehsil Churah, District Chamba, H.P. and (i) The Director, Nanal Hydro Power Consultancy Private Limited, Vardaan Building, Below Gita Mandir, Tuti Kandi, Shimla, H.P., (ii) The Site Incharge, Nanal Hydro Power Consultancy Private Limited, Village Nera, P.O. Ganed, Tehsil Churah, District Chamba, H.P. on the issue of alleged illegal termination from services *w.e.f.* 07-04-2020 *vide* letter dated 12-05-2020.

As per the report under Section 12(4) of the Industrial Disputes Act, 1947 submitted by the Labour Inspector-cum-Conciliation Officer, Chamba, District Chamba, H.P., he tried his level best to settle the dispute during conciliation proceedings but could not succeed. The report so received has been considered by the undersigned and as per power vested under sub-section 5 of Section 12 of the Act *ibid*, the undersigned has formed an opinion and decided that this dispute is required to be legally adjudicated by the Labour Court/ Industrial Tribunal.

Therefore, the undersigned while exercising the powers of appropriate Government vested in me *vide* Himachal Pradesh Government Notification No. Shram (A) 4-9/2006-IV-Loose, dated 15th February, 2014 and as per power vested under sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal, Kangra at Dharamshala, District Kangra, H.P. constituted under Section 7 of Act *ibid*, on the following issue/ issues for legal adjudication:—

“Whether the termination of services of Shri Karam Singh s/o Shri Rattan Chand, r/o Village Samot, P.O. Tarella, Tehsil Churah, District Chamba, H.P. *w.e.f.* 07-04-2020 *vide* letter dated 12-05-2020 by (i) The Director, Nanal Hydro Power Consultancy Private

Limited, Vardaan Building, Below Gita Mandir, Tuti Kandi, Shimla, H.P., (ii) The Site Incharge, Nanal Hydro Power Consultancy Private Limited, Village Nera, P.O. Ganed, Tehsil Churah, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers/management?"

Sd/-
Joint Labour Commissioner.

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-171001, the 26th April, 2022

No. 11-23/84(Lab)ID/2022-Una.—It appears to the undersigned that an industrial dispute exists between Shri Karnail Singh s/o Shri Rakha Ram, r/o Village Saowal, P.O. Dhulahar, Tehsil Haroli, District Una, H.P. and (i) The Managing Director, M/s Mrs. Bector Food Specialties Limited, Tahliwal, Tehsil & District Una, H.P. (Principal Employer), (ii) The General Manager, M/s Mrs. Bector Foods Specialties Limited, Tahliwal, Tehsil & District Una, H.P. (Principal Employer), (iii) Shri Satnam Lal, c/o M/s Mrs. Bector Food Specialties Limited, Tahliwal, Tehsil & District Una, H.P. (Contractor) on the issue of his alleged termination from services *w.e.f.* 24-10-2016.

As per the report under Section 12(4) of the Industrial Disputes Act, 1947 submitted by the Labour Officer-*cum*-Conciliation Officer, Una, District Una, H.P., he tried his level best to settle the dispute during conciliation proceedings but could not succeed. The report so received has been considered by the undersigned and as per power vested under sub-section 5 of Section 12 of the Act *ibid*, the undersigned has formed an opinion and decided that this dispute is required to be legally adjudicated by the Labour Court/ Industrial Tribunal.

Therefore, the undersigned while exercising the powers of appropriate Government vested in me *vide* Himachal Pradesh Government Notification No. Shram (A) 4-9/2006-IV-Loose, dated 15th February, 2014 and as per power vested under sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal, Kangra at Dharamshala, District Kangra, H.P. constituted under Section 7 of Act *ibid*, on the following issue/ issues for legal adjudication:—

“Whether the termination of services of Shri Karnail Singh s/o Shri Rakha Ram, r/o Village Saowal, P.O. Dhulahar, Tehsil Haroli, District Una, H.P. by (i) The Managing Director, M/S Mrs. Bector Food Specialties Limited, Tahliwal, Tehsil & District Una, H.P. (Principal Employer), (ii) The General Manager, M/s Mrs. Bector Foods Specialties Limited, Tahliwal, Tehsil & District Una, H.P. (Principal Employer), (iii) Shri Satnam Lal, c/o M/s Mrs. Bector Food Specialties Limited, Tahliwal, Tehsil & District Una, H. P. (Contractor), *w.e.f.* 24-10-2016, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

Sd/-
Joint Labour Commissioner.

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-171001, the 29th September, 2021

No. 11-1/85(Lab)ID/2021-Kangra.—It appears to the undersigned that an industrial dispute exists between Shri Kehar Singh s/o Shri Kirpa Ram, r/o Village Lulani, P.O. Dhared, Tehsil Baijnath, District Kangra, H.P. and (1) The Chairman, M/s SPML Infra Limited, 22, Camac Street, 3rd Floor, Block-A, Kolkata, (2) The General Manager, M/s SPML Infra Limited, Near Chimalhaar Home Stay, Chimalhaar, P.O. Geetapeeth, Palampur, District Kangra, H.P., (3) The Deputy General Manager, M/s SPML Infra Limited, Near Chimalhaar Home Stay, Chimalhaar, P.O. Geetapeeth, Palampur, District Kangra, H.P. on the issue of alleged termination from services *w.e.f.* 23-12-2019.

As per the report under Section 12(4) of the Industrial Disputes Act, 1947 submitted by the Labour Inspector-cum-Conciliation Officer, Palampur, District Kangra, H.P., he tried his level best to settle the dispute during conciliation proceedings but could not succeed. The report so received has been considered by the undersigned and as per power vested under sub-section 5 of Section 12 of the Act *ibid*, the undersigned has formed an opinion and decided that this dispute is required to be legally adjudicated by the Labour Court/ Industrial Tribunal.

Therefore, the undersigned while exercising the powers of appropriate Government vested in me *vide* Himachal Pradesh Government Notification No. Shram (A) 4-9/2006-IV-Loose, dated 15th February, 2014 and as per power vested under sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal, Kangra at Dharamshala, District Kangra, H.P. constituted under Section 7 of Act *ibid*, on the following issue/ issues for legal adjudication:—

“Whether the termination of services of Shri Kehar Singh s/o Shri Kirpa Ram, r/o Village Lulani, P.O. Dhared, Tehsil Baijnath, District Kangra, H.P. *w.e.f.* 23-12-2019 (as alleged by workman) by (1) The Chairman, M/s SPML Infra Limited, 22, Camac Street, 3rd Floor, Block-A, Kolkata, (2) The General Manager, M/s SPML Infra Limited, Near Chimalhaar Home Stay, Chimalhaar, P.O. Geetapeeth, Palampur, District Kangra, H.P., (3) The Deputy General Manager, M/s SPML Infra Limited, Near Chimalhaar Home Stay, Chimalhaar, P.O. Geetapeeth, Palampur, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers/management?”

Sd/-
Joint Labour Commissioner.

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-171001, the 29th September, 2021

No. 11-1/85(Lab)ID/2021-Kangra.—It appears to the undersigned that an industrial dispute exists between Smt. Kirna Devi w/o Shri Rattan Chand, r/o V.P.O. Deol, Tehsil Baijnath,

District Kangra, H.P. and (1) The Chairman, M/s SPML Infra Limited, 22, Camac Street, 3rd Floor, Block-A, Kolkata, (2) The General Manager, M/s SPML Infra Limited, Near Chimalhaar Home Stay, Chimalhaar, P.O. Geetapeeth, Palampur, District Kangra, H.P., (3) The Deputy General Manager, M/s SPML Infra Limited, Near Chimalhaar Home Stay, Chimalhaar, P.O. Geetapeeth, Palampur, District Kangra, H.P. on the issue of alleged termination from services *w.e.f.* 23-12-2019.

As per the report under Section 12(4) of the Industrial Disputes Act, 1947 submitted by the Labour Inspector-*cum*-Conciliation Officer, Palampur, District Kangra, H.P., he tried his level best to settle the dispute during conciliation proceedings but could not succeed. The report so received has been considered by the undersigned and as per power vested under sub-section 5 of Section 12 of the Act *ibid*, the undersigned has formed an opinion and decided that this dispute is required to be legally adjudicated by the Labour Court/ Industrial Tribunal.

Therefore, the undersigned while exercising the powers of appropriate Government vested in me *vide* Himachal Pradesh Government Notification No. Shram (A) 4-9/2006-IV-Loose, dated 15th February, 2014 and as per power vested under sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal, Kangra at Dharamshala, District Kangra, H.P. constituted under Section 7 of Act *ibid*, on the following issue/ issues for legal adjudication:—

“Whether the termination of services of Smt. Kirna Devi w/o Shri Rattan Chand, r/o V.P.O. Deol, Tehsil Baijnath, District Kangra, H.P. *w.e.f.* 23-12-2019 (as alleged by workman) by (1) The Chairman, M/s SPML Infra Limited, 22, Camac Street, 3rd Floor, Block-A, Kolkata, (2) The General Manager, M/s SPML Infra Limited, Near Chimalhaar Home Stay, Chimalhaar, P.O. Geetapeeth, Palampur, District Kangra, H.P., (3) The Deputy General Manager, M/s SPML Infra Limited, Near Chimalhaar Home Stay, Chimalhaar, P.O. Geetapeeth, Palampur, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers/management?”

Sd/-
Joint Labour Commissioner.

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-171001, the 25th May, 2022

No. 11-2/86(Lab)ID/2022-Bilaspur.—It appears to the undersigned that an industrial dispute exists between Shri Krishan Chand s/o Shri Ram Lok, r/o V.P.O. Rohal, Tehsil Jhandutta, District Bilaspur, H.P. and (i) The Executive Engineer, Jal Shakti Vibhag, Division Bilaspur, District Bilaspur, H.P. (Principal Employer), (ii) Shri Rattan Lal, r/o V.P.O. Deoli, Tehsil Sadar, District Bilaspur, H.P. (Contractor) on the issue of his alleged illegal termination from services *w.e.f.* 18-11-2020.

As per the report under Section 12(4) of the Industrial Disputes Act, 1947 submitted by the Labour Inspector-cum-Conciliation Officer, Bilaspur, District Bilaspur, H.P., he tried his level best to settle the dispute during conciliation proceedings but could not succeed. The report so received has been considered by the undersigned and as per power vested under sub-section 5 of Section 12 of the Act *ibid*, the undersigned has formed an opinion and decided that this dispute is required to be legally adjudicated by the Labour Court/ Industrial Tribunal.

Therefore, the undersigned while exercising the powers of appropriate Government vested in me *vide* Himachal Pradesh Government Notification No. Shram (A) 4-9/2006-IV-Loose, dated 15th February, 2014 and as per power vested under sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) this industrial dispute is referred to the Labour Court/Industrial Tribunal, Kangra at Dharamshala, District Kangra, H.P. constituted under Section 7 of Act *ibid*, on the following issue/ issues for legal adjudication:—

“Whether the termination of services of Shri Krishan Chand s/o Shri Ram Lok, r/o V.P.O. Rohal, Tehsil Jhandutta, District Bilaspur, H.P. by (i) The Executive Engineer, Jal Shakti Vibhag, Division Bilaspur, District Bilaspur, H.P. (Principal Employer), (ii) Shri Rattan Lal, r/o V.P.O. Deoli, Tehsil Sadar, District Bilaspur, H.P. (Contractor) *w.e.f.* 18-11-2020, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

Sd/-
Joint Labour Commissioner.